

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 14 CR 0094  
v. : U.S. Courthouse  
JOSEPH VALERIO, : Central Islip, N.Y.  
 :  
Defendant. : TRANSCRIPT OF TRIAL  
 :  
 : November 4, 2014  
-----X 10:05 a.m.

BEFORE:

HONORABLE JOSEPH F. BIANCO, U.S.D.J.  
and a jury

APPEARANCES:

For the Government: LORETTA E. LYNCH  
United States Attorney  
100 Federal Plaza  
Central Islip, New York 11722  
By: AMEET B. KABRAWALA, ESQ.  
ALLEN BODE, ESQ.  
Assistants, U.S. Attorney

For the Defendant: ANTHONY LaPINTA, ESQ.  
LEONARD LATO, ESQ.  
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Hauppauge, New York 11788

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United States District Court  
100 Federal Plaza  
Central Islip, New York 11722  
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Proceedings recorded by mechanical stenography.  
Transcript produced by computer-assisted transcription.

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1 MORNING SESSION

2  
3 THE CLERK: Calling 14 CR 094, United States  
4 against Joseph Valerio.

5 Please state your appearance for the record.

6 MR. KABRAWALA: Ameet Kabrawala for the  
7 government, joined by Allen Bode, and Special Agent Steven  
8 Troyd.

9 Good morning.

10 THE COURT: Good morning.

11 MR. LaPINTA: Good morning, your Honor, Anthony  
12 LaPinta and Leonard Lato, counsel for Mr. Valerio.

13 THE COURT: Good morning, Mr. Valerio is present  
14 as well.

15 The jurors are all here.

16 The first thing I wanted to do is my deputy  
17 advised me that one juror came into the courtroom instead  
18 of the jury room and she told me nothing was going on and  
19 the defendant was not brought up yet, so none of the  
20 jurors saw the defendant brought into the courtroom, and I  
21 wanted to make sure both sides agree with that.

22 MR. LaPINTA: Yes.

23 MR. KABRAWALA: Agreed.

24 THE COURT: As you know, we received a  
25 correspondence from one juror, juror number 10,

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1 Ms. Restituyo, and another juror brought in a doctor's  
2 note today, Ms. Weiss.

3 First of all, Dr. Brenner, I believe, treats  
4 members of my family, if it is the same Dr. Brenner, it  
5 doesn't affect my ability to be fair and impartial on this  
6 issue, but I wanted to know if anyone wanted to be heard  
7 on that?

8 MR. KABRAWALA: No, Judge.

9 MR. LaPINTA: Nothing, your Honor.

10 THE COURT: I don't know if it came up during  
11 jury selection, I assume it didn't come up since it is a  
12 big issue.

13 MR. LaPINTA: No.

14 MR. KABRAWALA: No.

15 THE COURT: I will question her with regard to  
16 it. My inclination with respect to both of these jurors  
17 is to excuse them, as long as we have the other jurors.  
18 And I asked my deputy if anyone else is complaining and  
19 she said no one else said anything to her.

20 We have four alternates and a short trial here.  
21 We have two alternates still. I don't think it is a big  
22 situation if any juror is on the case that doesn't want to  
23 serve. And it is clear to me based on these notes that  
24 they don't want to serve.

25 What I will do is, based on these letters, I

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1 will talk to them a little more about it.

2 MR. LATO: Your Honor, let me explain this to  
3 Mr. Valerio and get right back to you, and I will take a  
4 moment now to be able to do that?

5 THE COURT: Sure.

6 (Mr. Valerio confers with defense counsel.)

7 MR. LATO: Your Honor, Mr. Valerio agreed to us  
8 that it is our suggestion to go along with your Honor's  
9 suggestion to just excuse the jurors. Given the number of  
10 alternates, we are fine with the alternates without any  
11 further inquiry from the Court.

12 THE COURT: Is that correct, Mr. Valerio?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Government?

15 MR. KABRAWALA: It is fine with the government.

16 THE COURT: I think, and maybe you will remember  
17 better than I, she is one of the jurors with a child care  
18 issue?

19 MR. BODE: Yes, Restituyo.

20 THE COURT: She has -- I want to make sure she  
21 is the one and we don't have another juror with respect to  
22 that.

23 MR. KABRAWALA: That is the one.

24 THE COURT: I will bring them each out to tell  
25 them they are excused and tell them not to go back into

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1 the jury room. I will put them in Judge Hurley's jury  
2 room for a moment. I don't want a parade. I will await  
3 the other jurors to come out and then they can get their  
4 stuff.

5 I gave you a copy of my standard criminal  
6 instructions that I give in criminal cases.

7 Any objections to those instructions from the  
8 government?

9 MR. KABRAWALA: No objection.

10 THE COURT: From the defense?

11 MR. LaPINTA: No.

12 THE COURT: I will add -- I was thinking of  
13 adding one issue with respect to don't read anything with  
14 regard to the case. I think I will instruct them not to  
15 read Newsday during the trial. I have seen publicity with  
16 respect to the case in Newsday. I don't see Mr. Kessler  
17 in here now, but I will just tell them not to  
18 inadvertently come across it by not reading Newsday.

19 Any objection?

20 MR. KABRAWALA: No.

21 THE COURT: I also warn jurors not to use social  
22 media with respect to communicating about the case since  
23 that has become an issue.

24 We will mark a copy of the preliminary  
25 instructions as Court Exhibit A. A copy of the redacted

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1 juror notes as Court Exhibit B, that is Ms. Restituyo, and  
 2 Court Exhibit C will be the document from Dr. Brenner.  
 3 Any other issues you wish to address before the  
 4 opening statements?  
 5 MR. KABRAWALA: There is one other issue.  
 6 On October 29th the government filed ECF number  
 7 81, the government's motion to dismiss count 14. It is  
 8 tied to a December 12th, 2013 attempt. The government  
 9 moves to dismiss that count from the indictment.  
 10 THE COURT: On consent?  
 11 MR. LATO: Yes, your Honor.  
 12 THE COURT: Count 14 is dismissed on consent.  
 13 Any other issues?  
 14 MR. KABRAWALA: Not from the government.  
 15 THE COURT: Defense?  
 16 MR. LaPINTA: Your Honor, with respect to the  
 17 openings and 404(b) potential problem.  
 18 As far as I understand the Court's ruling, the  
 19 government is not permitted without first warning the  
 20 Court with respect to any 404(b) evidence, and that will  
 21 include any mention of the hidden cameras in the basement.  
 22 I will not talk about the camera in the ceiling because  
 23 that is evidence of the crime, but any other hidden  
 24 camera, or anything like dummy pistols or knives in the  
 25 basement is all 404(b). I want to make sure the

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1 government is not going to mention it in opening.  
 2 MR. KABRAWALA: The government will be talking  
 3 about hidden cameras found on the search on February 25th  
 4 of this year. But we will not talk about other hidden  
 5 items previously found.  
 6 I think we talked about a probation officer  
 7 potentially coming in to testify, which is essentially  
 8 about his items found in the defendant's basement almost  
 9 ten years ago. That is not coming in during our opening.  
 10 We will be talking about what evidence was found during a  
 11 search warrant in connection with this case.  
 12 THE COURT: But not the weapons. You will not  
 13 discuss the weapons?  
 14 MR. KABRAWALA: We are not talking about the  
 15 weapons. That is not germane to this case, your Honor.  
 16 THE COURT: So you will discuss the camera in  
 17 the ceiling?  
 18 MR. KABRAWALA: Yes, of course.  
 19 THE COURT: And then these other cameras were  
 20 seized during the search?  
 21 MR. KABRAWALA: Two other cameras found in  
 22 February of this year. One a hidden camera in a wall  
 23 clock, and the other was on a stage, a kind of stage-like  
 24 platform with a camera pointing upwards. That was also  
 25 found this year.

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1 MR. LATO: Objection to that. When it was found  
 2 is irrelevant to 404(b). The question is whether it is  
 3 evidence of this crime or some other crime. As far as I  
 4 know, there is no evidence in this case that the camera in  
 5 the clock or the other cameras that Mr. Kabrawala  
 6 mentioned were used to produce child porn in this case.  
 7 It has to do with potentially having sex with other women.  
 8 It has nothing to do with the child porn.  
 9 The camera in the ceiling, yes, because the  
 10 government has evidence that that camera was used to  
 11 photograph one of the girls that is a subject of this  
 12 case. That clearly comes in as direct evidence, but not  
 13 the other cameras.  
 14 THE COURT: What is the government's evidence  
 15 with regard to the wall clock or the other camera with  
 16 respect to the charges in this case?  
 17 MR. KABRAWALA: Judge, it relates to the fact --  
 18 there were hidden cameras found in the ceiling. The other  
 19 two cameras tend to demonstrate that the defendant had  
 20 control over that camera in the ceiling, and he hid  
 21 cameras as a matter of his MO.  
 22 THE COURT: The stage was in the same room with  
 23 the camera, and the camera in the ceiling?  
 24 MR. KABRAWALA: Yes.  
 25 One second.

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1 (Government counsel confer.)  
 2 MR. KABRAWALA: The hidden camera in the clock  
 3 pointing at the same sofa where Jane Doe No. 2 was  
 4 sexually exploited, and the stage was found in the same  
 5 room in the basement where the hidden camera in the  
 6 ceiling was found.  
 7 THE COURT: So there is a camera in the stage.  
 8 MR. KABRAWALA: In the stage-like platform,  
 9 right over here, and there is a camera pointing upwards.  
 10 THE COURT: And the photos of Jane Doe No. 2  
 11 were taken in the vicinity of that stage, in the same room  
 12 of that stage, or is the stage in a different room?  
 13 MR. KABRAWALA: It is all in the basement where  
 14 the stage was found and the camera was found.  
 15 We are happy to have the defendant stipulate to  
 16 the existence of the cameras in the basement and the  
 17 defendant's control over them. And if he wants to  
 18 stipulate that he hid a camera in the basement ceiling, we  
 19 will just talk about that.  
 20 MR. LATO: Your Honor, this is the problem,  
 21 because we are talking about two children, Jane Doe 1,  
 22 Ukraine. Obviously the cameras had nothing to do with  
 23 her.  
 24 Jane Doe No. 2, she is photographed, according  
 25 to the government's evidence, with one camera in the

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1 ceiling, but not hooked up. That camera comes in as  
2 direct evidence of the crime definitely.

3 The government wants to introduce other cameras,  
4 including a clock camera and one on the stage that has  
5 nothing to do with the production of the video of Jane Doe  
6 No. 2. That is 404(b) evidence, not evidence of this  
7 crime. And it is too early to tell whether it is  
8 admissible.

9 THE COURT: They are suggesting it is going to  
10 be admissible for them to try to show the defendant's  
11 control over the camera in the ceiling, and whether or not  
12 it is going to be an issue in the case or not.

13 MR. LaPINTA: Can I just add one point?

14 THE COURT: Yes.

15 MR. LaPINTA: The camera in the ceiling was not  
16 set up to record in the ceiling. It was in a case  
17 secreted, hidden in the ceiling. A different situation.

18 The other two cameras in the clock and on the  
19 stage were set up to record.

20 The subject camcorder alleged to be recording  
21 Jane Doe No. 2 was not set up to record in the basement,  
22 it was hidden presumably, their argument, to avoid  
23 detection by law enforcement.

24 THE COURT: The camera used to record was in the  
25 ceiling?

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1 MR. LaPINTA: Yes, but in a zipped case secreted  
2 in the ceiling.

3 THE COURT: But the wall clock suggests it was  
4 pointed at the same sofa at which the other images were  
5 taken, correct?

6 MR. LaPINTA: Yes. But there is no allegation  
7 that that camera recorded anything. The recording, the  
8 central issue with Jane Doe 2 was the hand-held camcorder  
9 secreted in its case.

10 THE COURT: If someone has multiple ways of  
11 filming something, and they are only alleged to have used  
12 one particular camera on the occasion, it doesn't mean  
13 that other camera equipment is irrelevant. They are  
14 trying to show how he produced this in terms of his  
15 control and intent in terms of the images at issue in this  
16 case.

17 MR. LaPINTA: Judge, it is not questionable that  
18 the shooting of the video of Jane Doe No. 2 was intended  
19 to record Jane Doe No. 2. It was a hand-held camcorder  
20 taken feet away from her as she was dressed in costumes  
21 and as she was naked. There is no allegation of a  
22 surreptitious recording of Jane Doe No. 2.

23 You are adding into the equation surreptitious  
24 recording not part of the allegations of Jane Doe No. 2.

25 MR. LATO: Your Honor, to add one thing.

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1 If it was unclear which camera had been used to  
2 record Jane Doe No. 2, I would agree that all the other  
3 cameras that had a potential for recording would come in  
4 as circumstantial evidence which camera was used.

5 But there is no question that the Jane Doe No. 2  
6 was filmed with the camera that was hidden in the ceiling.  
7 It was a hand-held camcorder and hidden from law  
8 enforcement.

9 The other cameras had nothing to do with  
10 recording any video in this case.

11 MR. KABRAWALA: May I be heard in this case?

12 Showing you what is marked as  
13 Government's Exhibit 404.

14 There is a surreptitious nature in using this  
15 camera.

16 Over the area where a recording light would be  
17 projected there is black electrical tape.

18 There are images of Jane Doe No. 2, where she is  
19 clearly unaware that she is being filmed. There is also  
20 pictures of her where she is trying to block the camera,  
21 where she must be aware there is a camera pointed at her.

22 The surreptitious nature of filming is germane  
23 to this case. And as your Honor I think in this case  
24 clearly understands, control over this camera is going to  
25 be germane to this case as it relates to Jane Doe No. 2.

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1 For those reasons the other cameras have to come  
2 in.

3 MR. LaPINTA: One last thing. Sorry. But this  
4 is so sensitive.

5 They met with Jane Doe No. 2. Jane Doe No. 2  
6 agrees that there was recordings of her made. Never once  
7 until now have we ever heard of any of -- in any of the  
8 papers, complaints or anything, that the recordings of  
9 Jane Doe No. 2 were secretly performed. The first time  
10 ever.

11 MR. KABRAWALA: Your Honor, looking at the  
12 picture, it is going to be up to the jury. Again, they  
13 are going to be called upon to determine whether or not  
14 this was lascivious or pornographic in nature, some of  
15 these images.

16 But the flavor of the picture it is clear that  
17 Jane Doe No. 2 doesn't know what is going on.

18 MR. LaPINTA: I saw the pictures and the stills  
19 as well. I disagree with that.

20 You can't testify or explain about the mental  
21 state of a nine year old or six year old girl taken in a  
22 picture.

23 MR. KABRAWALA: There is a picture of her, just  
24 her crotch, from the waist down.

25 THE COURT: Let me go back to this.

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1 The government's, I guess, main argument is that  
2 the use of the camera and the control of the camera is  
3 going to be an issue in the case.

4 Is that in issue here?

5 MR. LaPINTA: The control? The ownership of the  
6 camera?

7 THE COURT: Not just ownership, that he was  
8 using the camera. Or is it going to be alleged that  
9 someone else was using the camera to take the pictures?  
10 Or is that not in dispute?

11 MR. LaPINTA: That particular camera, the  
12 argument would be that, yes, it is his camera. There are  
13 receipts for the camera found in the house.

14 But our position is he did not take those naked  
15 photographs of her.

16 The subject form of Jane Doe No. 2 was not taken  
17 by Joseph Valerio.

18 THE COURT: What is the relevance of the stage  
19 to the government's case?

20 MR. KABRAWALA: The relevance of the stage and  
21 the hidden camera in the stage shows control of the other  
22 cameras, particularly the one in the ceiling, that it was  
23 set up, and obviously fabricated as a makeshift stage.

24 It just shows that the defendant intended to  
25 take pictures in the basement and controlled from the area

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1 of the basement for the purposes of taking pictures there.  
2 It shows dominion over that area, and essentially his MO.

3 MR. LATO: Your Honor, may I just have the last  
4 word on this?

5 THE COURT: I don't know if it will be the last  
6 word.

7 MR. LATO: It may be.

8 It has to do with 403.

9 Whatever relevance it is under 401, we have a  
10 403 problem here.

11 The jury may get the impression that there was a  
12 production studio that Mr. Valerio was not charged with,  
13 and all the hidden cameras under the stage, they may get  
14 the feeling that he is setting up a studio.

15 It may be relevant at some point during the  
16 trial, but in opening --

17 THE COURT: I have a feeling it is relevant.  
18 Because one of the key questions is who took the images in  
19 issue, and certainly it will become highly probative if he  
20 has some type of production capability to set up in his  
21 basement. It makes it more likely that the owner of the  
22 camera took the photos than someone coming in with a  
23 hand-held camera and secreting it somewhere in the  
24 ceiling. It becomes much more probative on that issue.

25 So I am considering 403, that is why I'm

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1 spending time on this.

2 My key question is if there is a dispute as to  
3 who took the images, it becoming highly probative that the  
4 defendant's home was set up to record images in the  
5 basement area where those other images were taken.

6 I don't know what more information I will have  
7 other than that now.

8 MR. LATO: None, your Honor.

9 I agree with Mr. LaPinta, what your Honor was  
10 implying there, yes, we will deny that Mr. Valerio took  
11 the video with the camcorder in the ceiling.

12 THE COURT: All right.

13 I will then overrule the objection. Obviously  
14 it is preserved for the record.

15 On this issue I considered the 403 issue, which  
16 is the issue apparently which will be the control over the  
17 camera that took the images of Jane Doe 2 that are charged  
18 in the indictment. And the defendant is disputing that he  
19 took those photos or videos.

20 Therefore, the control over that camera becomes  
21 a critical issue in the case.

22 Certainly evidence that his basement area was  
23 set up with other surreptitious equipment to video someone  
24 becomes highly probative on that issue. I don't think I  
25 can underemphasize how important that evidence will be.

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1 I have weighed the danger of unfair prejudice,  
2 but I think it is not substantially outweighed by the  
3 probative value under 403.

4 Going back to the other issue of the other  
5 recordings, the government cannot suggest that that  
6 equipment was used on other occasions with respect to  
7 other potential victims. He can only -- they can only  
8 discuss this on the issue of control.

9 Understood?

10 MR. KABRAWALA: That is understood, yes.

11 THE COURT: Anything else before the jury comes  
12 out?

13 MR. KABRAWALA: No, sir.

14 MR. LATO: No, your Honor.

15 THE COURT: We will bring the jury out.

16 One by one, bring out Ms. Weiss first.

17 I know you have a discussion about the number of  
18 images the government will lay to the jury during the  
19 case.

20 Is that resolved or still ongoing? I want to  
21 make sure we don't have that issue in opening statement.  
22 I assume it will not come up in opening statement.

23 MR. KABRAWALA: We are generally going to say  
24 that the jurors are going to have to look at images. We  
25 will not talk about the number or the specific dates.

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1 MR. LaPINTA: Your Honor, we had occasion to see  
2 snippets of videos. Those snippets are pieces of the full  
3 length videos we originally saw. We have no objection  
4 with regard to the use of the snippets at this last page.

5 Now, your instruction with regard to Newsday, is  
6 it an instruction you typically use, or are you going to  
7 use the one that the government proposed to you?

8 THE COURT: I didn't see what they proposed to  
9 me actually.

10 MR. KABRAWALA: We proposed originally to Judge  
11 Brown in connection with the jury selection, and that  
12 was --

13 THE COURT: What did Judge Brown tell them? Did  
14 he tell them that?

15 MR. KABRAWALA: Judge Brown did not mention  
16 Newsday specifically because it would have drawn their  
17 attention specifically to Newsday.

18 I think we were going to discuss it with your  
19 Honor.

20 THE COURT: On page 6 where I say don't read or  
21 listen to anything touching on this case in any way, I'm  
22 going to say, and specifically I'm instructing you not to  
23 read Newsday. And I should say not to watch News 12 as  
24 well.

25 I see Mr. Kessler in the courtroom now as well.

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1 And I do expect there to be or suspect there to be  
2 coverage on one or both of those media as well.

3 All right, let's bring in Ms. Weiss. .

4 (Ms. Weiss enters the courtroom.)

5 THE COURT: Good morning, Ms. Weiss, I'm Judge  
6 Bianco. I received the letter from your doctor with  
7 regard to your medical condition, and I have discussed it  
8 with the attorneys. In light of that, I will excuse you  
9 from service in this case. I don't want you to have to  
10 deal with jury service given your medical issues. I  
11 appreciate your willingness to otherwise serve.

12 A JUROR: Thank you.

13 THE COURT: There is another jury room, I will  
14 ask you to sit there until we get all the other jurors in  
15 here and then you can go back to get your stuff.

16 Thank you.

17 A JUROR: Thank you.

18 (Ms. Weiss exits the courtroom.)

19 THE COURT: Now get number 10; Ms. Restituyo,  
20 R-E-S-T-I-T-U-Y-O.

21 (Ms. Restituyo enters the courtroom.)

22 THE COURT: Good morning, Ms. Restituyo.

23 I'm Judge Bianco. I received your letter and  
24 your attached letter from a supervisor regarding the fact  
25 that you will not be paid for your jury service.

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1 In light of that, I will excuse you from this  
2 case. I understand that you probably didn't realize this  
3 at the time of the jury selection. And I don't want you  
4 to have a financial hardship.

5 I will excuse you and just ask that you wait in  
6 the other jury room. I will bring the rest of the jurors  
7 in. If you have any stuff, you can go back and get it.

8 A JUROR: I have my stuff here.

9 THE COURT: And then you can leave from this  
10 door. Thank you.

11 (Ms. Restituyo exits the courtroom.)

12 THE COURT: So I know who the alternates are,  
13 alternate one?

14 MR. BODE: I believe it is Ms. Raymond as  
15 alternate one.

16 THE COURT: She will become juror number three.

17 MR. BODE: Erika DelRosario I have as the second  
18 one.

19 THE COURT: And she will become juror number  
20 ten.

21 Who is giving the opening for the defense?

22 MR. LATO: I will, your Honor.

23 THE COURT: And the government?

24 MR. KABRAWALA: I will, your Honor.

25 MR. BODE: Mr. Kabrawala will be conducting the

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1 whole case. I am just second seat.

2 THE COURT: All right.

3 (The jury enters the courtroom.)

4 THE COURT: You should start filling the first  
5 seat closest to me.

6 You should have seven and seven, right?

7 Everyone can be seated.

8 The two jurors here that are in the same order,  
9 move to the front row next to juror number five.

10 Then everyone else in the back row, you can move  
11 down.

12 Good morning, members of the jury.

13 I want to welcome you all back to the Eastern  
14 District of New York.

15 I want to introduce myself since I didn't do the  
16 jury selection. Magistrate Judge Brown was gracious  
17 enough to select the jury for me.

18 I am Judge Joseph Bianco, and I will preside  
19 over the criminal trial to begin today.

20 I'm sure Magistrate Judge Brown did this weeks  
21 ago, but I want to thank you for your willingness to serve  
22 as jurors in this case. I appreciate your willingness to  
23 serve. And I will do everything I can that assures you  
24 are treated with professionalism and respect during the  
25 course of the trial and the trial goes as efficiently as



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1 it possibly can.

2 We did have to excuse two jurors for personal  
3 reasons this morning.

4 Let me just go through -- I want to make sure  
5 everyone who is seated here.

6 So juror number one is Ms. Alvarez.

7 Two is Ms. Dorgan.

8 Juror number three I had to excuse, so you are  
9 Ms. Wedts.

10 I will ask everyone after to move down one seat,  
11 because I will fill in that seat with another juror.

12 Ms. Wedts, if you can move down one seat.

13 I will ask alternate number one, Ms. Raymond, to  
14 fill seat number three.

15 Juror number five, I can't read the handwriting  
16 here, how do you spell your last name?

17 A JUROR: C-S-A-N.

18 THE COURT: Good morning.

19 A JUROR: Good morning.

20 THE COURT: Number six is Ms. Serieux-Girard.

21 Number seven is Ms. Cohen.

22 Eight is Ms. Jagan.

23 Juror number nine is Ms. Piurek.

24 I had to excuse juror number 10. So if you can  
25 move please.

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1 Exactly.

2 New juror number 10 is Ms. DelRosario, if you  
3 can move down there.

4 Number 11 is Mr. Hublal, H-U-B-L-A-L.

5 Good morning.

6 Number 12 is Ms. Salerno.

7 Alternate one is Ms. Cadle, and number two is  
8 Mr. Bogeli, B-O-G-E-L-I.

9 All right.

10 I appreciate your patience this morning and I  
11 apologize for the delay.

12 I had matters we needed to take care of this  
13 morning.

14 The first order of business is for you to take  
15 the oath as jurors in this case.

16 I will ask you to all please stand and take the  
17 oath.

18 (A jury of 12 plus two alternates, previously  
19 empaneled, are duly sworn.)

20 THE COURT: Members of jury, now that you are  
21 sworn I will give you some preliminary instructions to  
22 guide you in your participation in the trial.

23 My full instructions to you of the law come at  
24 the end of the case, after the trial is complete, and the  
25 lawyers are given their -- giving their summations or

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1 closing statements to you. I have some preliminary  
2 instructions, about ten minutes or so, to help guide you  
3 as a juror in this case.

4 To begin with, you are here to administer  
5 justice in this case according to the law and the  
6 evidence. You are to perform this task with complete  
7 fairness and impartiality and without bias, prejudice or  
8 sympathy for or against the government or the defendant.

9 It will be your duty to find from the evidence  
10 what the facts are. You and you alone will be the judges  
11 of the facts. You will then have to apply to those facts  
12 the law as the Court will give it to you. You must follow  
13 that law whether you agree with it or not.

14 Nothing the Court may say or do during the  
15 course of the trial is intended to indicate or should be  
16 taken by you as indicating what your verdict should be.  
17 That is entirely up to you.

18 The evidence from which you will find the facts  
19 will consist of the testimony of witnesses, documents, and  
20 other things received in the record as exhibits. And any  
21 facts that the lawyers agree to or stipulate to or that  
22 the Court may instruct you to find.

23 Certain things are not evidence. I will list  
24 them for you now.

25 One. Statements, arguments and questions by

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1 lawyers are not evidence.

2 Two. Objections to questions are not evidence.  
3 Lawyers have an obligation to their clients to make  
4 objections when they believe evidence being offered is  
5 improper under the rules of evidence. You should not be  
6 influenced by the Court's ruling on it. If the objection  
7 is sustained, ignore the question. If it is overruled,  
8 treat the answer like any other. If you are instructed  
9 that some item of evidence is received for a limited  
10 purpose only, you must follow that instruction.

11 Three. Testimony that the Court excludes or  
12 tells you to disregard is not evidence and must not be  
13 considered.

14 Anything you see or hear outside the courtroom  
15 is not evidence and must be disregarded. You are to  
16 decide the case solely on the evidence presented here in  
17 the courtroom.

18 There are two kinds of evidence: Direct and  
19 circumstantial.

20 Direct evidence is direct proof of a fact, such  
21 as testimony of an eyewitness. Circumstantial evidence is  
22 proof of facts from which you may infer or conclude that  
23 other facts exist. I will give you further instructions  
24 on these as well as other matters at the end of the case.  
25 But keep in mind that you may consider both kinds of

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1 evidence.

2 It is up to you to decide which witnesses to  
3 believe, which witnesses not to believe, and how much of  
4 any witness' testimony to accept or reject. I will give  
5 you some guidelines for determining the credibility of  
6 witnesses at the end of the case.

7 As you know, this is a criminal case. There are  
8 three basic rules about a criminal case that you must keep  
9 in mind.

10 First, the defendant is presumed innocent until  
11 proven guilty. The indictment against the defendant  
12 brought by the government is only an accusation, nothing  
13 more. It is not proof of guilt or anything else. The  
14 defendant therefore starts out with a clean slate.

15 Second, the burden of proof is on the government  
16 at all times. The defendant has no burden to prove his  
17 innocence or to present any evidence, or to testify.  
18 Since the defendant has the right to remain silent, the  
19 law prohibits you from arriving at your verdict by  
20 considering that the defendant may not have testified.

21 Third, the government must prove the defendant's  
22 guilt beyond a reasonable doubt. I will give you further  
23 instructions on this point later.

24 Now, a few words about your conduct as jurors.

25 First, I instruct you that during the trial you

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1 are not to discuss this case among yourselves or with  
2 anyone else, including during any recesses or breaks.  
3 Even as among yourselves, you see, it is important that  
4 each of you keep an open mind until you heard all the  
5 evidence, the attorneys' summations and my instructions on  
6 the law, only then will you begin to exchange views among  
7 yourselves and reach a verdict. But until I tell you to  
8 actually begin deliberating at the end of the case and at  
9 the end of my instructions on the law, please do not  
10 discuss this case at all among yourselves, with family  
11 members or anyone else.

12 So when you are back in the jury room during a  
13 break or waiting to come out here, you can't discuss the  
14 case, you are not permitted to do that.

15 When you go home today or you call work and  
16 people start asking you what the case is about, you have  
17 to tell them that Judge Bianco told me not to discuss the  
18 case. When it is over you can discuss it with anyone you  
19 want or no one else at all. Not during the case.

20 I need to emphasize when I say not to discuss  
21 it, it means the media as well, no texts or Facebook. No  
22 communications about anything about this case.

23 Second, do not permit any other person to  
24 discuss this case in your presence. If someone does so  
25 despite you telling him or her not to, report the fact to

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1 me. Please do not, however, discuss with your fellow  
2 jurors either that fact or any other fact that you feel  
3 necessary to bring to my attention. The reason is  
4 obvious.

5 If something occurs that affects the ability of  
6 a juror to continue to serve fairly and impartially, and  
7 that juror communicates it to fellow jurors, more than one  
8 of you may be affected. So please just report to me if  
9 you have any issues.

10 Third, please do not, while you are serving as  
11 jurors in this case, have any conversations with the  
12 parties, the attorneys, or any witnesses in this case,  
13 whether in the courtroom, in the hallways, in the  
14 elevator, cafeteria, outside or anywhere else.

15 By this I mean not only to avoid talking about  
16 the case. Do not talk at all, even to say good morning or  
17 to acknowledge any of these people. Someone seeing a  
18 juror in conversation with a party, a lawyer or a witness,  
19 might think that something improper was being discussed.  
20 To avoid even the appearance of impropriety, then, have no  
21 conversations or acknowledgements of any kind. The  
22 lawyers as officers of the court are particularly  
23 sensitive to this. So I can tell you when they pass you  
24 in the halls and the cafeteria, without even acknowledging  
25 your presence, and they turn away and start walking in the

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1 other direction, they are not being rude. They are simply  
2 following this instruction, and you need to follow it as  
3 well.

4 Fourth, do not read or listen to anything  
5 touching on this case in any way.

6 And specifically, I don't know if there will be  
7 publicity with respect to the case or not, but in an  
8 abundance of caution I will instruct you not to read  
9 Newsday or watch News 12 during the trial so you don't  
10 inadvertently come across anything in the case if there is  
11 publicity. So don't watch News 12 or read Newsday, and  
12 certainly avoid reading anything touching on the case in  
13 any media.

14 Fifth, do not try to make any research or make  
15 any investigation about the case on your own.

16 And let me just emphasize that point. Jurors  
17 are not allowed to do any outside research whatsoever.  
18 And that would include visiting the location talked about  
19 during the trial, as an example, or going home and  
20 Googling something about the trial to try to find out more  
21 information, or try to talk to a lawyer about some ruling  
22 that I made. No outside research of any kind is permitted  
23 by you, a juror. You are only allowed to decide the case  
24 based upon the evidence in the courtroom, and no outside  
25 research of any kind is permitted. So, please, do not do



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1 that.

2 Finally, do not form any opinion until all the  
3 evidence is in.

4 Keep an open mind until you start your  
5 deliberations at the end of the case.

6 Sometimes jurors ask if they can take notes.

7 And I do permit the taking of notes. And Michelle, as you  
8 see, has given each of you a pad and pen to write with if  
9 you want to take notes. I have no view or opinion if a  
10 juror wants to take notes. I need to give you some  
11 instructions for those who wish to take notes.

12 The first is, if you take notes, leave them in  
13 the jury room when you leave at night. Do not take them  
14 home with you. They will be in the jury room when you  
15 come back in the morning.

16 I want you to remember they are for your own  
17 personal use.

18 Also, the notes are simply to help your memory.  
19 I don't want you to place too much emphasis on a juror's  
20 notes. As you know, a person's notes can be wrong.

21 At the conclusion of the case when you  
22 deliberate, notes that any juror may take may not be given  
23 any greater weight or influence in the determination of  
24 the case than the recollection or impression of other  
25 jurors whether from notes or memory with respect to the

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1 evidence presented, or what conclusions, if any, should be  
2 drawn from such evidence.

3 When you deliberate at the end of the case, any  
4 difference between a juror's recollection and another  
5 juror's notes is to be settled by asking the court  
6 reporter to read back the testimony in question. It is  
7 the court record rather than a juror's notes to be based  
8 on the verdict.

9 You see we have a reporter here, Harry, taking  
10 down the notes of everything said in the courtroom.  
11 Anything will be read back to you at your request when you  
12 deliberate. And that is true with respect to physical  
13 evidence received during the trial. That is also  
14 available to the jury upon request.

15 The trial will now begin.

16 First the government will make an opening  
17 statement, which is simply an outline to help you  
18 understand the evidence as it comes in.

19 Next, the defendant's attorney may, but does not  
20 have to, make an opening statement. The defendant has no  
21 burden of proof whatsoever. The government has the burden  
22 of proof at all times. So defense counsel doesn't even  
23 have to give an opening statement. But they are permitted  
24 to do so if they wish.

25 Opening statements are not evidence. Rather,

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1 you can consider the opening statement as a preview of  
2 what each side expects the evidence in the case will show.

3 The government will then present its evidence  
4 through testimony of witnesses.

5 Counsel for the defendant may, if he wishes,  
6 cross-examine these witnesses.

7 There is also something called redirect and  
8 recross. Sometimes the lawyers get up a second time to  
9 ask followup questions of things covered during the cross.  
10 There may be some of that as well.

11 Evidence may also be in the form of physical  
12 items, exhibits, which are offered in evidence.

13 Following the government's case, the defendant  
14 may, if he wishes, present evidence. But he is not  
15 required to do so. The burden is always on the government  
16 to prove every element of the offense charged beyond a  
17 reasonable doubt. The law never imposes on the defendant  
18 in a criminal case the burden of calling any witnesses or  
19 introducing any evidence.

20 If the defendant puts on any evidence, the  
21 government may or may not wish to put further evidence  
22 before you to rebut what the defense has set forth.

23 After all the evidence has been presented, the  
24 attorneys will have the opportunity to present a closing  
25 argument or summation to you.

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1 What is said in these arguments is not evidence.  
2 Each party is simply presenting to you their view of what  
3 the evidence has shown and suggesting to you the  
4 inferences or conclusions you should draw from the  
5 evidence, whether you find an argument sound and  
6 persuasive or you may not.

7 Because the government has the burden of proof  
8 in the case, they have the right to argue first in the  
9 closing argument, followed by counsel for the defendant.  
10 After which the government may give a short rebuttal  
11 summation.

12 After you heard the closing arguments, I will  
13 instruct you on the applicable law. You will then retire  
14 to the jury room to deliberate on your verdict.

15 You have a tremendously important task as  
16 jurors. It is to determine the facts. Our Constitution  
17 gives a defendant a right to have you, who are members of  
18 the community, find those facts. You, and not the Court,  
19 are the sole judge of the facts.

20 Let me say to the alternate jurors that you  
21 should listen just as carefully and conscientiously as the  
22 other jurors. As you have seen already this morning, you  
23 may very well be called upon prior to the conclusion of  
24 the case to take the place of one of the jurors, and then  
25 you will have to render a verdict. So please pay close

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1 attention at all times.  
 2 That ends my preliminary instructions.  
 3 I just want to discuss with you scheduling.  
 4 As you know, we are sitting Monday through  
 5 Thursday. We are not sitting on Friday this week. The  
 6 typical trial day is 9:30 to 4:30. We take a morning  
 7 break usually around 11:00, 11:15, at a convenient time,  
 8 for 15 or 20 minutes.  
 9 We break for lunch sometime between 12:30 and  
 10 1:00. I handle other matters during the lunch break on  
 11 other cases. Sometimes depending on when those are  
 12 scheduled or where we are in a particular witness, I may  
 13 break sometime closer to 1:00. But at sometime close  
 14 between 12:30 and 1:00.  
 15 The afternoon, we take a mid-afternoon break  
 16 somewhere around 3:00, 3:15. And then we continue to  
 17 4:30.  
 18 I know a lot of you have buses or trains to  
 19 catch, so we don't go beyond 4:30. I will end every day  
 20 at 4:30. Unless occasionally we have a witness who has  
 21 five minutes left, in order not to have the witness come  
 22 back I may ask you to stay five minutes or so if you can.  
 23 Other than that we will not go past 4:30.  
 24 As I said when I started, it is important to me  
 25 that you are treated with professionalism and respect, and

**Opening Statement/Kabrawala**

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1 any issues you have you can bring to Michelle's attention.  
 2 I meet with the lawyers before the day begins,  
 3 lunchtime, at the end of the day, to try to make sure that  
 4 the trial is proceeding efficiently, to avoid the number  
 5 of sidebars that we have to have or to avoid you sitting  
 6 back in the jury room waiting to come out.  
 7 I can't promise you that that is not going to  
 8 happen because things come up during the trial and rulings  
 9 need to be made by me. And despite our best efforts to  
 10 minimize that time, there may be some occasions where you  
 11 will need to wait.  
 12 I will just ask for your patience so I can  
 13 assure you we are doing everything we can to minimize the  
 14 amount of time you are not here in the courtroom hearing  
 15 the evidence.  
 16 So with that, we are now ready to proceed to the  
 17 opening statements.  
 18 The government goes first, Mr. Kabrawala.  
 19 MR. KABRAWALA: The defendant, Joseph Valerio,  
 20 had a woman molest her young daughter on camera and send  
 21 him videos of the sexual abuse by email. From his house  
 22 here at Long Island, the defendant sat at the computer and  
 23 emailed the young woman thousands of miles away scripting  
 24 out a sexually explicit scene for this woman to perform on  
 25 her young daughter, who is just a toddler.

**Opening Statement/Kabrawala**

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1 He didn't do this just once, not just twice.  
 2 The defendant sent dozens of emails to this woman, his  
 3 co-conspirator, directing her to do exactly what he said.  
 4 The defendant and this woman had an arrangement.  
 5 The defendant demanded videos, the woman molesting her  
 6 young daughter on camera. And the woman, she wanted  
 7 money. And the defendant got exactly what he wanted from  
 8 this arrangement. He got custom-made home videos of a  
 9 young girl, a toddler, being molested by her mother, sent  
 10 straight to his in box.  
 11 Now, you are going to learn that the defendant  
 12 didn't stop there. You will learn that the defendant  
 13 himself sexually exploited another young girl, his own  
 14 [REDACTED], who was about six years old at the time. He  
 15 dressed her up in costumes, a red, white and blue  
 16 cheerleader outfit, a blond wig, nothing but lace tights,  
 17 and he took sexually explicit pictures of her in his  
 18 basement.  
 19 It was in the basement of his house located in  
 20 Smithtown, just miles from this courthouse.  
 21 These two young girls, that is why we are here  
 22 today. And it is because of these two young girls that  
 23 this man, the defendant Joseph Valerio, who sits now in  
 24 this courtroom before you.  
 25 Good morning.

**Opening Statement/Kabrawala**

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1 My name is Ameek Kabrawala and I am an Assistant  
 2 U.S. Attorney here in the Eastern District of New York.  
 3 I'm joined by Assistant U.S. Attorney Allen Bode  
 4 and Special Agent Steven Troyd of the FBI. Together we  
 5 represent the United States of America in this case.  
 6 So how did this all come about?  
 7 Well, you will learn that the defendant met a  
 8 woman named Olena Kalichenko on an internet dating site.  
 9 Kalichenko lived overseas in the Ukraine. She had a young  
 10 daughter named [REDACTED].  
 11 Kalichenko even came to visit the defendant here  
 12 in Smithtown without her daughter. For about two years  
 13 the defendant and Kalichenko exchanged emails, emails  
 14 about everyday things, like what was going on in their  
 15 lives. And they emailed about Kalichenko and her daughter  
 16 coming to live in Smithtown with the defendant.  
 17 But shortly into their relationship the  
 18 defendant, he took things in another direction. He  
 19 started asking Kalichenko to make sexually explicit videos  
 20 with her young daughter in email after email. The  
 21 defendant demanded videos in which he directed Kalichenko  
 22 to perform very specific sex acts, such as performing oral  
 23 sex on her toddler, dressing the toddler up in tights. In  
 24 exchange, Kalichenko, the defendant's co-conspirator,  
 25 asked the defendant for money. And she got it.

## Opening Statement/Kabrawala

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1 Both got what they wanted. The defendant got  
2 videos of a young girl being molested and sexually  
3 exploited by her mother, and Kalichenko got money.

4 So you will learn that over the course of a  
5 six-month period in 2012, a six-month period in 2012, the  
6 defendant requested and received dozens of videos,  
7 numerous videos.

8 These videos show Kalichenko sexually abusing  
9 her daughter, and following the defendant's script.

10 You will learn that based on an investigation by  
11 the FBI, federal agents uncovered this arrangement between  
12 the defendant and Kalichenko. As a result of their  
13 investigation, the FBI obtained a court ordered search  
14 warrant to search the defendant's residence up in  
15 Smithtown. And in January of this year, 2014, the FBI,  
16 together with the Suffolk County Police Department,  
17 conducted a search of the defendant's residence, where he  
18 lived with a female companion.

19 Now, you will learn that the defendant was home  
20 at the time the search warrant was conducted, and he spoke  
21 with law enforcement agents.

22 You are going to learn that the defendant  
23 confessed to directing Kalichenko to produce child  
24 pornography with her young daughter. The defendant  
25 admitted that he sent emails to Kalichenko asking for

## Opening Statement/Kabrawala

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1 videos of her sexually abusing her daughter. The  
2 defendant also admitted that he paid Kalichenko thousands  
3 of dollars, and he wanted these videos in return. And he  
4 confessed to receiving that child pornography by email.

5 In fact, agents showed the defendant two emails  
6 from July 2012 in which he scripted out exactly what he  
7 wanted to have Kalichenko do with her daughter.

8 You will see the defendant's exact words. You  
9 will see the emails. In one of the emails the defendant  
10 literally says, he tells Kalichenko to follow, quote  
11 unquote, the script. He told Kalichenko to videotape  
12 herself performing oral sex on her daughter.

13 The defendant said he wanted the toddler to be  
14 dressed up in, quote, pantyhose and tights, with long  
15 blond hair.

16 The defendant even described what he wanted to  
17 see Kalichenko do with the child's toys.

18 In one email the defendant said he would pay  
19 Kalichenko, quote unquote, for her time making videos with  
20 [REDACTED].

21 In one of the emails the defendant commands:  
22 Get those videos done.

23 After reading the emails, do you know what he  
24 did? The defendant confessed that he sent them.

25 Now, while searching the defendant's house over

## Opening Statement/Kabrawala

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1 in Smithtown, the agents found a computer in the  
2 defendant's home. It was in the home office area. Using  
3 forensic tools and technology, agents recovered a number  
4 of emails the defendant sent to Kalichenko where he  
5 scripted out what he wanted her to do with the toddler.

6 Agents also found numerous sexually explicit  
7 videos, all in the defendant's inbox, his email inbox in  
8 his computer, right there at his house in Smithtown, and  
9 in the same room where agents discovered his computer,  
10 where they found a number of digital devices.

11 One of those devices is a Samsung memory card,  
12 one of those tiny little memory cards you put in your  
13 camera.

14 On that memory card agents made a very  
15 disturbing discovery. They found images of another young  
16 girl, the defendant's very own [REDACTED], who was about six  
17 years old at the time, taken using a Samsung digital  
18 camera, a Samsung memory card and a Samsung digital video  
19 camera.

20 Some of the pictures of the defendant's [REDACTED]  
21 she is dressed up in costume with nothing but a blond wig  
22 and tights. The camera focused only on her genitals.

23 These pictures are sexually explicit. Child  
24 pornography, ladies and gentlemen.

25 The agents also saw something they recognized.

## Opening Statement/Kabrawala

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1 They saw a number of things they recognized. The  
2 background, the furniture, the toys. They have seen those  
3 same things before when they were at the defendant's house  
4 searching it.

5 They saw those same things in the defendant's  
6 basement.

7 Based on that new information, federal agents  
8 got a second Court ordered search warrant now that they  
9 knew something had happened at the defendant's house, and  
10 more specifically in his basement.

11 When they searched the defendant's house again,  
12 what did they find? They found things that looked very  
13 familiar to them.

14 The pattern on the furniture. They found the  
15 red, white and blue cheerleader outfit. They found the  
16 blond wig. They found the toys. All of which can be seen  
17 in the pictures. And they found hidden cameras throughout  
18 the basement.

19 They also found a wall clock with a hidden  
20 camera in it.

21 They found a stage-like platform, a stage, with  
22 a hidden camera in it. Do you know where it was pointed?  
23 Upwards.

24 And agents also found the Samsung digital video  
25 camera that this defendant used to take sexually explicit

Opening Statement/Kabrawala

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1 pictures of his [REDACTED]  
 2 Do you know where they found that? They found  
 3 that hidden in the ceiling above the basement ceiling.  
 4 Agents had to take apart the ceiling, and they found it  
 5 there.  
 6 Now, for his actions the defendant is charged in  
 7 a 15-count criminal indictment, as to [REDACTED], the toddler  
 8 in the Ukraine. The defendant is charged with a  
 9 conspiracy to sexually exploit the child, transportation  
 10 of child pornography, receipt of child pornography and  
 11 also attempted sexual exploitation of a child for emails  
 12 that the defendant sent to the Ukraine to Kalichenko  
 13 directing the videos of Kalichenko molesting her daughter.  
 14 For the defendant's actions involving his [REDACTED]  
 15 here in Smithtown, he is charged with sexually exploiting  
 16 a child. And the defendant is also charged with  
 17 possessing child pornography.  
 18 Now, as the prosecution, we have the burden of  
 19 proving the defendant guilty beyond a reasonable doubt.  
 20 And we will meet that burden by presenting you with  
 21 evidence in the form of witnesses, documents and physical  
 22 evidence.  
 23 First and foremost, as you know from jury  
 24 selection, in order to decide the facts of this case it  
 25 will be necessary for you to see the images and the videos

Opening Statement/Kabrawala

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1 that this defendant created or caused to be created.  
 2 Now, while it is troubling to view these images,  
 3 they speak for themselves. You will see the videos that  
 4 the defendant created in response to his emails, following  
 5 his script, that Kalichenko created. And you will see the  
 6 sexually explicit images of the defendant's young [REDACTED]  
 7 taken in his basement.  
 8 You will also hear testimony from  
 9 Special Agent Steven Troyd who will testify about the two  
 10 searches and what his team found during the searches, and  
 11 where they found it.  
 12 You will see the computer that the defendant  
 13 used to communicate with Kalichenko. You will see the  
 14 Samsung digital memory card. You will see the Samsung  
 15 video camera that the defendant used to film his [REDACTED].  
 16 You will learn where it was found. You will see the  
 17 basement. You will see the basement ceiling panel tiles  
 18 taken off where the camera was found. And you will see a  
 19 receipt showing that the defendant purchased the Samsung  
 20 video camera and digital memory card and that they were  
 21 shipped to him.  
 22 You will also see the hidden cameras, costumes,  
 23 costumes that the defendant dressed his [REDACTED] with.  
 24 Agent Troyd will recount for you the defendant's  
 25 confession, that he admitted directing Kalichenko to make

Opening Statement/Lato

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1 child pornography with her toddler, and he -- that he paid  
 2 her to do so.  
 3 You will also see the money trail in the form of  
 4 Western Union wire transfers showing the defendant paid  
 5 Kalichenko thousands of dollars, just like he admitted.  
 6 Now, ladies and gentlemen, the facts of this  
 7 case are clear.  
 8 At the end of the trial we will ask you to  
 9 return a verdict, the only verdict that is consistent with  
 10 those facts. We will ask you to hold the defendant  
 11 accountable for his actions and find him guilty on all  
 12 counts.  
 13 Thank you.  
 14 THE COURT: Members of the jury, as I said  
 15 before, the government has the burden of proof at all  
 16 times, therefore the defendant does not need to make an  
 17 opening statement. But I am advised that the defendant  
 18 wishes to give an opening statement.  
 19 Mr. Lato, you may proceed.  
 20 MR. LATO: Thank you, your Honor.  
 21 Good morning, ladies and gentlemen.  
 22 My name is Leonard Lato, as Judge Bianco has  
 23 already said. And I will be trying this case with my  
 24 co-counsel, Anthony M. LaPinta, the taller of the two  
 25 gentlemen at the table. And there is Mr. Joseph Valerio,

Opening Statement/Lato

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1 the defendant a couple of chairs away.  
 2 The question in this case is not what, but who.  
 3 A person produced child pornography videos with  
 4 a toddler. Mr. Kabrawala said that, and the defense  
 5 agrees with that. But that person, contrary to what  
 6 Mr. Kabrawala said, was not Joseph Valerio. That person  
 7 may have been Olena Kalichenko.  
 8 If Olena Kalichenko, she produced the videos not  
 9 in the United States but in the Ukraine.  
 10 Joseph Valerio has never been to the Ukraine.  
 11 As Mr. Kabrawala stated, another video or other  
 12 videos were made of a young girl, Mr. Valerio's [REDACTED]. We  
 13 agree with that, meaning "we," the defense.  
 14 But that person, once again, was not Joseph  
 15 Valerio. That person, once again, may have been Olena  
 16 Kalichenko.  
 17 Because as Mr. Valerio was never to the Ukraine,  
 18 Ms. Kalichenko has been to the United States and has been,  
 19 and has stayed in Mr. Valerio's house.  
 20 It is not Mr. Valerio, and it only may be  
 21 Ms. Kalichenko.  
 22 Why the uncertainty?  
 23 Because the government's investigation was  
 24 incomplete.  
 25 The government searched Mr. Valerio's house.

<p><b>Opening Statement/Lato</b></p> <p style="text-align: right;"><b>254</b></p> <p>1 Mr. Kabrawala talked about that. They searched it</p> <p>2 extensively. They seized all of Mr. Valerio's computers,</p> <p>3 all of the hard drives, the CDs, the DVDs, memory cards,</p> <p>4 all type of computer media the FBI seized.</p> <p>5 And what of the videos of the toddler in the</p> <p>6 Ukraine? Not on any of the computers, any of the hard</p> <p>7 drives, or any of the media.</p> <p>8 If Mr. Valerio loved these videos, why weren't</p> <p>9 they in his house? Nowhere to be found.</p> <p>10 Could they be on Olena Kalichenko's computer,</p> <p>11 cell phone, external hard drives, back in the Ukraine?</p> <p>12 It could be. The FBI doesn't know. They never</p> <p>13 attempted to find out.</p> <p>14 So for all we know there is a lot of evidence of</p> <p>15 those videos of that toddler somewhere in the Ukraine.</p> <p>16 And the government is not going to be able to produce</p> <p>17 them.</p> <p>18 Now, with respect to Mr. Valerio's [REDACTED], there</p> <p>19 is one piece of physical evidence, and we will be up front</p> <p>20 with you. There is a memory card that was found in</p> <p>21 Mr. Valerio's basement containing deleted images of</p> <p>22 Mr. Valerio's [REDACTED] in one or two videos.</p> <p>23 I say "deleted" because that is important. Once</p> <p>24 again, if Mr. Valerio likes child pornography, why doesn't</p> <p>25 he have these videos in his basement?</p>	<p><b>Opening Statement/Lato</b></p> <p style="text-align: right;"><b>256</b></p> <p>1 interrogations of Joseph Valerio.</p> <p>2 There will also be a Suffolk County detective,</p> <p>3 not an FBI agent. There will be no FBI agent expert</p> <p>4 before you, but a Suffolk County detective, Rory</p> <p>5 Forrestal, who will testify, among other things, the lack</p> <p>6 of videos of the toddler from the Ukraine on the machines</p> <p>7 and the non-existed or deleted videos on the memory card.</p> <p>8 Now, what happened to the children in this case</p> <p>9 is certain. Who made it happen is not.</p> <p>10 Thank you.</p> <p>11 THE COURT: Members of the jury, that completes</p> <p>12 the opening statement. The government will begin the</p> <p>13 presentation of its evidence. But we will take our</p> <p>14 morning break before we do that.</p> <p>15 We will take a 15 or 20 minute break.</p> <p>16 Do not discuss the case.</p> <p>17 Thank you.</p> <p>18 (Whereupon, at this time the jury leaves the</p> <p>19 courtroom.)</p> <p>20</p> <p>21 (Whereupon, a recess was taken.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p><b>Opening Statement/Lato</b></p> <p style="text-align: right;"><b>255</b></p> <p>1 Some of you may know just because something is</p> <p>2 deleted doesn't mean it can't be restored from the recycle</p> <p>3 bin on the computer. That is not something that happened</p> <p>4 here.</p> <p>5 In fact, the government's computer expert had to</p> <p>6 use special software available to law enforcement to</p> <p>7 restore these deleted images on that memory card. It</p> <p>8 doesn't seem like something or someone who wanted child</p> <p>9 porn would do, take an image and then delete it and</p> <p>10 requiring special software to restore it.</p> <p>11 Someone wanted the video of Mr. Valerio's [REDACTED]</p> <p>12 produced. Someone who doesn't want the videos wanted them</p> <p>13 deleted, nullified, as if they never existed.</p> <p>14 Who wanted them produced? It could have been</p> <p>15 Olena Kalichenko when she was in Mr. Valerio's house.</p> <p>16 Who wanted them nullified as if they never</p> <p>17 existed? It could have been Mr. Valerio. It could have</p> <p>18 been also Olena Kalichenko after having made them. It</p> <p>19 could have been anyone. It is just speculation.</p> <p>20 Now, there will probably be two principal</p> <p>21 government witnesses in this case. FBI</p> <p>22 Special Agent Steven Troyd sitting over there, who just</p> <p>23 nodded to you, with the glasses. And he will bring to</p> <p>24 you, and his testimony, his incomplete investigation,</p> <p>25 including his search and his unrecorded coercive</p>	<p><b>Opening Statement/Lato</b></p> <p style="text-align: right;"><b>257</b></p> <p>1 THE COURT: Please be seated.</p> <p>2 Is the government ready?</p> <p>3 MR. KABRAWALA: Yes, Judge.</p> <p>4 THE COURT: Defense ready?</p> <p>5 MR. LaPINTA: Yes, Judge.</p> <p>6 THE COURT: Who is your first witness?</p> <p>7 MR. KABRAWALA: Special Agent Peter Angelini.</p> <p>8 I should say Assistant Special Agent in Charge.</p> <p>9 THE COURT: All right, bring in the jury.</p> <p>10 MR. LaPINTA: Your Honor, would you mind if I</p> <p>11 moved this monitor back a bit?</p> <p>12 THE COURT: You can move it anywhere you like.</p> <p>13 MR. LaPINTA: Thank you.</p> <p>14 THE CLERK: All rise.</p> <p>15 (Whereupon, the jury at this time entered the</p> <p>16 courtroom.)</p> <p>17 THE COURT: Please be seated.</p> <p>18 Members of jury, as I said before the break, the</p> <p>19 government will begin its presentation of the evidence.</p> <p>20 Please call your first witness.</p> <p>21 MR. KABRAWALA: Judge, the United States calls</p> <p>22 Peter Angelini.</p> <p>23 THE CLERK: Please remain standing and raise</p> <p>24 your right hand.</p> <p>25</p>



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1 PETER ANGELINI,  
2 called as a witness, having been first  
3 duly sworn, was examined and testified  
4 as follows:  
5 THE CLERK: Please state your name and spell it  
6 for the record.  
7 THE WITNESS: Peter Angelini, P-E-T-E-R,  
8 A-N-G-E-L-I-N-I.  
9 THE COURT: Please be seated.  
10 I will just ask you to pull the microphone over  
11 and pull your chair up so you can be very close to it.  
12 THE WITNESS: Yes, your Honor.  
13  
14 DIRECT EXAMINATION  
15 BY MR. KABRAWALA:  
16 Q Good morning.  
17 A Good morning.  
18 Q Are you employed?  
19 A Yes.  
20 Q Where do you work?  
21 A The FBI in Chicago.  
22 Q The Federal Bureau of Investigation in Chicago?  
23 A Yes.  
24 Q Please describe your education background.  
25 A I have an undergraduate degree from the University of

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1 Michigan, and a law degree from the University of  
2 Pittsburgh  
3 Q Please speak up.  
4 A An undergraduates degree from the University of  
5 Michigan and a law degree from the University of  
6 Pittsburgh  
7 Q What is your job title with the FBI?  
8 A Currently the Assistant Special Agent in Charge in  
9 Chicago over the branch that has counterintelligence and  
10 cyber investigation.  
11 Q Assistant Special Agent in Charge, is that ASAC for  
12 short?  
13 A Yes.  
14 Q How long have you been employed by the FBI?  
15 A 14 and a half years.  
16 Q And where were you previously assigned before  
17 becoming an ASAC in Chicago?  
18 A To the U.S. Embassy in Kiev as the Assistant Legal  
19 Attache for the FBI there.  
20 Q You were an Assistant Legal Attache, is that referred  
21 to as ALAT?  
22 A Yes, ALAT.  
23 Q How long were you stationed as Assistant Legal  
24 Attache in Kiev, Ukraine?  
25 A For two and a half years.

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1 Q Generally speaking, what were your primary duties as  
2 the Assistant Legal Attache stationed in Kiev?  
3 A The FBI has offices all over the world. We have our  
4 people stationed in embassies and consulates all over the  
5 countries.  
6 Our responsibility is to liaison with the local  
7 police, in my case with the MVD, the local police there,  
8 as well as with the SBU, which is the security service.  
9 We work with them. We gather information that  
10 is requested for FBI cases in the United States, and when  
11 the Ukrainians need investigative assistance perhaps in  
12 the US for their cases, we would help them obtain that  
13 information as well.  
14 Q While you were stationed in the Ukraine, did you  
15 participate in an investigation involving an individual  
16 named Joseph Valerio?  
17 A I did.  
18 Q Now, without telling us what anyone told you, can you  
19 briefly describe how Joseph Valerio came to your  
20 attention.  
21 A The Assistant Regional Security Officer, or RSO,  
22 informed me that they had information that there was a  
23 walk-in to the embassy that had a complaint, a criminal  
24 complaint, that may have relevance to the US.  
25 Q Let me stop you right there. What do you mean by

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1 walk-in? Clarify.  
2 A Very often people would just walk into the embassy  
3 and say I have information, or I have a complaint, or  
4 something relevant to US interests.  
5 So depending what the matter is, it is  
6 prescreened by the RSO, the Regional Security Officer. If  
7 it is criminal nature it comes to us, or if national  
8 security it comes to us or other agencies. That is what a  
9 walk-in is.  
10 Q All right.  
11 Now, continue. You were describing how Joseph  
12 Valerio came to your attention.  
13 A So I had information there was a walk-in complaint  
14 with a potential criminal complaint, so myself and James  
15 Bulin (ph) interviewed the complainant.  
16 Q What was the complainant's name?  
17 A Her name was Olena Kalichenko.  
18 Q Spell it, please.  
19 A First name O-L-E-N-A, last name K-A-L-I-C-H-E-N-K-O.  
20 Q Are you familiar with any other spellings of that  
21 name, the English version of that name?  
22 A I have seen it in variations; Ms. Kalichenko used  
23 Helena, H-E-L-E-N-A, or Elena, E-L-E-N-A, as well as  
24 Olena.  
25 Q Now, when was your initial meeting with Kalichenko?



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1 **A The first time I met with her was on November 8th,**  
2 **2013.**  
3 **Q** Did you have more than one meeting, the first meeting  
4 at the embassy?  
5 **A I met with her a second time on November 19th. I**  
6 **also met her on one occasion I think in April, before I**  
7 **was leaving to return to the US from the Ukraine.**  
8 **Q** Now, let's talk about November, you said you met with  
9 her twice on November 8th and 19th.  
10 If I showed you a picture of Ms. Kalichenko, do  
11 you think you would recognize her?  
12 **A I would.**  
13 **Q** All right.  
14 MR. KABRAWALA: May I approach, Judge?  
15 THE COURT: Yes.  
16 **Q** Showing you what is marked as Government's Exhibit 4  
17 for Identification.  
18 Take a look at that. Do you recognize the  
19 individual in that photograph?  
20 (Handed to the witness.)  
21 **A Yes.**  
22 **Q** What is it?  
23 **A A photograph of Olena Kalichenko.**  
24 **Q** Generally speaking, is it a fair and actual depiction  
25 of what Olena Kalichenko looked like when you saw her?

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1 **A Yes.**  
2 MR. KABRAWALA: Move to admit, Judge.  
3 MR. LATO: No objection.  
4 THE COURT: Government's Exhibit 4 is admitted.  
5 (Whereupon, Government's Exhibit 4 was received  
6 in evidence.)  
7 MR. KABRAWALA: I will publish it.  
8 (Whereupon, the exhibit/exhibits were published  
9 to the jury.)  
10 **Q** Now, you testified you met with Kalichenko. Without  
11 telling us what Kalichenko actually said to you, did she  
12 provide you with any documents during the first meeting on  
13 November 8th of 2013?  
14 **A She did.**  
15 **She provided me a number of documents. One was,**  
16 **I-believe, an email that got sent in. She sent it into**  
17 **the embassy detailing it as part of the complaint. She**  
18 **had a couple of emails purportedly from a person in the**  
19 **US. And then there were a couple of quasi legal documents**  
20 **that were included in that packet as well.**  
21 **Q** I want to draw your attention to one of the legal  
22 documents that you obtained from Kalichenko showing you  
23 what is marked as Government's Exhibit 3.  
24 (Handed to the witness.)  
25 **Q** Do you recognize that document?

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1 **A Yes.**  
2 **Q** Is that a document that Ms. Kalichenko provided to  
3 you -- withdrawn.  
4 Is that a true and correct copy of a document  
5 that Ms. Kalichenko provided to you during the first  
6 meeting in November?  
7 **A Yes.**  
8 MR. KABRAWALA: Move to admit.  
9 MR. LATO: May I see it, your Honor?  
10 THE COURT: Yes.  
11 MR. KABRAWALA: Just for the record, a  
12 pre-marked exhibit has been provided to the defendant  
13 approximately a week ago.  
14 MR. LATO: One moment, please.  
15 (Whereupon, at this time there was a pause in  
16 the proceedings.)  
17 MR. LATO: Objection. May we approach?  
18 THE COURT: Yes.  
19 (Whereupon, at this time the following took  
20 place at the sidebar.)  
21 THE COURT: What is the objection?  
22 MR. LATO: Two grounds.  
23 One, a 403 problem. It is highly inflammatory  
24 and has nothing to do with this case.  
25

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1 Number two, it is hearsay. And it is a Crawford  
2 violation.  
3 MR. KABRAWALA: Judge, with respect to the first  
4 point, it is no more inflammatory than the charges of this  
5 case where the defendant is charged with creating and  
6 scripting out child pornography.  
7 THE COURT: What is the second one?  
8 MR. KABRAWALA: Secondly, it lays the groundwork  
9 for the conspiracy itself.  
10 As you know, there is a conspiracy charged here.  
11 It is intrinsic evidence of the crime that is inextricably  
12 related. This shows a sort of genesis of the conspiracy.  
13 This is essentially a contract that is between  
14 Ms. Kalichenko and the defendant whereby they have an  
15 arrangement of some sort.  
16 THE COURT: Let me read it.  
17 (Whereupon, at this time there was a pause in  
18 the proceedings.)  
19 THE COURT: This is a co-conspirator statement?  
20 MR. KABRAWALA: It is both an admission and  
21 co-conspirator statement. It is not hearsay at all.  
22 It is going to come in and you will see it will  
23 also come in through the email, his email as well. It is  
24 his own statement and a co-conspirator statement. And it  
25 lays the groundwork for the conspiracy.

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1 THE COURT: You are not alleging he signed it?  
 2 MR. LATO: It is not properly authenticated.  
 3 This witness can't properly authenticate this document.  
 4 Ms. Kalichenko is not here.  
 5 THE COURT: Is the same email on his computer?  
 6 MR. KABRAWALA: The email is, but not signed.  
 7 Actually, Judge, we can also have it come in  
 8 based on its effect on the listener, the witness. Because  
 9 this email and other emails caused the witness to initiate  
 10 the investigation.  
 11 THE COURT: Yes, but under 403 it wouldn't be  
 12 necessary for the details to come in to explain why he  
 13 initiated the investigation. He can say I received  
 14 certain emails. I will not let it in for that purpose  
 15 under 403.  
 16 I don't know how you can authenticate this  
 17 document through this witness. You can offer it  
 18 through -- I guess you got this on his computer?  
 19 MR. KABRAWALA: This was brought in.  
 20 THE COURT: You can use that one and not this  
 21 one.  
 22 MR. KABRAWALA: It is about to come up, your  
 23 Honor, but we are going to be discussing a number of  
 24 emails as well that Kalichenko provided.  
 25 THE COURT: My ruling is under 403 that any

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1 emails she provided him is hearsay.  
 2 MR. KABRAWALA: All right.  
 3 THE COURT: If you are offering it for him to  
 4 explain his actions, I don't think it is necessary given  
 5 that the other emails will come in to understand what the  
 6 genesis of the investigation was. You can say he provided  
 7 emails and that is it.  
 8 MR. KABRAWALA: What I will propose is we finish  
 9 up with this witness and call him. Because the next  
 10 witness we will call is Cablevision, who will authenticate  
 11 the emails.  
 12 THE COURT: Let me ask the defense.  
 13 Other than this one, do you object to him  
 14 referring to other emails that are going to come in?  
 15 MR. LATO: If he is going to get into the  
 16 content, yes. Because there may be other reasons to  
 17 object to the other emails.  
 18 At this juncture this document is objectionable  
 19 because of the inflammatory 403 nature. We will consider  
 20 them one at a time. Some may come in and others may not.  
 21 THE COURT: You will have to recall him then. I  
 22 don't want to do it backwards.  
 23 Have him stand by if you feel it is important  
 24 enough.  
 25 MR. KABRAWALA: They are also doubly

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1 authenticated.  
 2 THE COURT: If you want him to identify the  
 3 exhibits by number, and we can see if it can come in  
 4 independent of him. You can do that.  
 5 MR. LaPINTA: This is concerning --  
 6 MR. KABRAWALA: We have moved on from this.  
 7 They are five emails that will all come in anyway.  
 8 MR. LaPINTA: They will come in once you  
 9 establish the Cablevision foundation.  
 10 MR. BODE: Or his house.  
 11 THE COURT: This is probably that document.  
 12 That document was not found on the computer.  
 13 MR. LATO: That document is out.  
 14 MR. KABRAWALA: Not the signed one, but the  
 15 email without the signatures.  
 16 MR. LaPINTA: All right. Thank you.  
 17  
 18 (Whereupon, at this time the following takes  
 19 place in open court.)  
 20  
 21 BY MR. KABRAWALA:  
 22 Q I want to show you what is marked as  
 23 Government's Exhibit 2. It is a packet of approximately  
 24 45 emails. Withdrawn.  
 25 It is a packet of 45 documents.

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1 (Handed to the witness.)  
 2 Q Do you recognize that?  
 3 A I do.  
 4 Q What is that?  
 5 A A number of emails that were sent to me by  
 6 Ms. Kalichenko in the approximate three or four days --  
 7 one of the three or four days subsequent to my first  
 8 interview with her.  
 9 Q So you received those emails from Ms. Kalichenko?  
 10 A I did.  
 11 During our first interview she said she had --  
 12 MR. LATO: Objection.  
 13 THE COURT: Sustained.  
 14 A It was indicated that there was information she  
 15 wanted me to see.  
 16 So she sent me these items subsequent to the  
 17 interview.  
 18 Q I wanted to show you a few more.  
 19 I will show you Exhibit 5, Exhibit 2-B, 2-D and  
 20 2-E.  
 21 (Handed to the witness.)  
 22 Q Do you recognize those documents?  
 23 A Yes, I recognize them.  
 24 Q And just for the record, the last thing I brought up  
 25 to you, that packet, that is Government's Exhibit 2?

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1 **A Yes, sir.**  
2 **Q** Okay.  
3 The exhibits that I handed you, 2-B, 2-D and 2-E  
4 and 5 -- actually 5 has attachments to it that is marked  
5 as 5-A.  
6 **A Yes, sir.**  
7 **Q** What do you recognize all those exhibits to be?  
8 **A I recognize these exhibits to be among the emails**  
9 **that Ms. Kalichenko forwarded to me after our first**  
10 **interview.**  
11 **Q** Is there an email address on those?  
12 **A Yes, my FBI address as well as the State Department,**  
13 **yes.**  
14 **Q** Now, after you were provided all the emails that you  
15 identified, did there come a time that Ms. Kalichenko  
16 provided you with anything else?  
17 **A Yes.**  
18 **We interviewed her a few weeks later and she**  
19 **provided me with a disk, a video disk.**  
20 **Q** Showing you what is marked as Government's Exhibit 1.  
21 (Handed to the witness.)  
22 **Q** Do you recognize that?  
23 **A Yes.**  
24 **Q** What is it?  
25 **A It is the disk that Ms. Kalichenko gave to me in the**

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1 **Ukraine.**  
2 **Q** Please repeat that.  
3 **A The disk that Ms. Kalichenko gave to me.**  
4 **Q** How do you know it is the same disk?  
5 **A I reviewed it yesterday and put my initials on it.**  
6 **When I first got the disk from Ms. Kalichenko,**  
7 **myself and our cyber ALAT, another agent like me who works**  
8 **with computers.**  
9 **We queued up the disk and we could not make the**  
10 **video run, but we saw the first frames that they were**  
11 **showing in the disk.**  
12 **As I reviewed the disk yesterday it was the same**  
13 **frames I have seen in Kiev.**  
14 MR. KABRAWALA: Move to admit.  
15 MR. LATO: No objection.  
16 THE COURT: Exhibit 1 is admitted.  
17 (Whereupon, Government's Exhibit 1 was received  
18 in evidence.)  
19 **Q** Generally speaking, when you viewed this disk before  
20 coming to court today, can you describe what you saw on  
21 the disk?  
22 **A The disk contains video, multiple snippets spliced**  
23 **together of Ms. Kalichenko basically nude or dancing, and**  
24 **posing for the camera, sometimes alone. And then there is**  
25 **also some videos of her with her daughter, purportedly her**

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1 **daughter, a toddler about two or three years old. And due**  
2 **to -- she was fondling herself, trying to touch the child**  
3 **and trying to get the child to touch her genitals. That**  
4 **is more or less of it.**  
5 **Q** Showing you what is marked as  
6 Government's Exhibit 1-A and 1-B.  
7 (Handed to the witness.)  
8 **Q** Do you recognize those two exhibits? If so, what is  
9 it?  
10 **A I recognize each of these. I recognize them to be**  
11 **still frame shots from the video, Exhibit 1.**  
12 **Q** Do you recognize the still frame shots, true and  
13 correct still frame shots from the video admitted as  
14 Government's Exhibit 1?  
15 **A Yes, sir.**  
16 MR. KABRAWALA: Move to admit both of them.  
17 MR. LATO: No objection.  
18 THE COURT: 1-A and 1-B are admitted.  
19 (Whereupon, Government's Exhibits 1-A and 1-B  
20 were received in evidence.)  
21 MR. KABRAWALA: I will publish them now.  
22 (Whereupon, the exhibit/exhibits were published  
23 to the jury.)  
24 **Q** Publishing 1-A. And now publishing 1-B.  
25 (Whereupon, at this time there was a pause in

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1 the proceedings.)  
2 **Q** Now, referring to 1-A, what is depicted in this?  
3 **A 1-A is a picture of Ms. Olena Kalichenko, a facial**  
4 **shot.**  
5 **Q** And 1-B, what is depicted?  
6 **A 1-B is also Ms. Kalichenko, as well as the toddler**  
7 **that was in the video that I assumed to be her daughter.**  
8 **Q** Now, following your meeting and interaction with  
9 Kalichenko what, if anything, did you do with the  
10 information and things that Ms. Kalichenko either  
11 forwarded to you or had given to you?  
12 **A The legal attache, the LEGAT office, L-E-G-A-T office**  
13 **that we have all over the world, we don't typically**  
14 **conduct our own investigation. We work off of other**  
15 **divisions of the FBI.**  
16 **In this case the relevant division would have**  
17 **been in New York. So we sent -- I sent all the emails and**  
18 **all the information I had back to New York.**  
19 **Initially I sent, after the first meeting in**  
20 **November, I made contact with the New York field office**  
21 **and I sent them my report, which is the FD 302 and the**  
22 **emails. And then I received a request from them for**  
23 **follow-up, including to request the disk from**  
24 **Ms. Kalichenko.**  
25 **After the second meeting with Ms. Kalichenko, I**

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1 **obtained the disk and wrote another 302, report of**  
2 **interview, and the disk we sent to New York also for**  
3 **evaluation.**  
4 **Q** Was there in New York a lead point in contacting or a  
5 lead investigator that you primarily dealt with?  
6 **A** **The case was ultimately assigned to**  
7 **Special Agent Steven Troyd and that is who I had contact**  
8 **with in this case.**  
9 MR. KABRAWALA: Just one moment, Judge.  
10 (Government counsel confer.)  
11 MR. KABRAWALA: There is nothing further at this  
12 time, Judge. We just ask permission to recall the witness  
13 after the next witness testifies.  
14 THE COURT: Yes.  
15 Cross-examination.  
16 MR. LATO: Yes, your Honor.  
17 One moment, please, before I begin, to confer?  
18 THE COURT: Sure.  
19 (Whereupon, at this time there was a pause in  
20 the proceedings.)  
21 MR. LATO: Thank you for that moment, your  
22 Honor.  
23  
24  
25

Angelini-Cross/Lato

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1 THE COURT: Sure.  
2  
3 CROSS-EXAMINATION.  
4 BY MR. LATO:  
5 **Q** Good afternoon, Special Agent Angelini.  
6 **A** **Good afternoon.**  
7 **Q** Did you ever search Ms. Kalichenko's person?  
8 **A** **I did not.**  
9 **Q** Did she have a cell phone with her that you saw?  
10 **A** **She did have a cell phone.**  
11 **Q** Did you search it?  
12 **A** **I did not.**  
13 **Q** Did you ever go to a place where she lived?  
14 **A** **I never went to where she lived.**  
15 **Q** Did you search any electronic device of hers?  
16 **A** **There were discussions about that internally. We did**  
17 **discuss that internally. I don't think that we ultimately**  
18 **did search the phone because --**  
19 **Q** Hold on, sir. There is no question before you. It  
20 is just whether you did or did not.  
21 **A** **I did not search her phone or electronics.**  
22 **Q** To your knowledge did any one of the FBI conduct a  
23 search of any of her electronic devices?  
24 **A** **I don't know if they did in New York. But I know in**  
25 **Kiev we did not.**

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1 **Q** Does the FBI have jurisdiction to conduct searches in  
2 Kiev, in the Ukraine?  
3 **A** **If it is a consent search we could probably do it.**  
4 **If it was off the embassy grounds we would have to**  
5 **probably coordinate with the local police and they would**  
6 **probably want to do it themselves.**  
7 **Q** Did you ask Ms. Kalichenko for permission to search  
8 any of her electronic devices, including her cell phone?  
9 Yes or no, sir.  
10 **A** **I don't think we did.**  
11 **Q** In terms of the police in the Ukraine, are there  
12 different types of police forces in Ukraine?  
13 **A** **There is one national police.**  
14 **Q** Is that the militsyia, M-I-L-I-T-S-Y-I-A.  
15 **A** **Yes.**  
16 **Q** Is that correct spelling, agent?  
17 **A** **Probably.**  
18 **Q** Does the militsyia have permission to conduct  
19 searches?  
20 **A** **Yes.**  
21 **Q** Do you as an FBI agent work with the militsyia?  
22 **A** **Yes.**  
23 **Q** To your knowledge, did the militsyia conduct any  
24 search of any of Ms. Kalichenko's electronic devices?  
25 **A** **Not to my knowledge.**

Angelini-Cross/Lato

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1 **Q** Did you receive a complaint from a church or some  
2 other group that Ms. Kalichenko had sent that entity a  
3 video?  
4 **A** **I never did.**  
5 **Q** Did Ms. Kalichenko send a video to a boyfriend other  
6 than Mr. Valerio?  
7 **A** **I only know based on what she told me. And my**  
8 **understanding is that she said she did.**  
9 **Q** Now, the child in the picture we just showed to the  
10 jury, you are assuming that it is Ms. Kalichenko's child;  
11 is that correct?  
12 **A** **Correct.**  
13 MR. LATO: One moment.  
14 (Defense counsel confer.)  
15 **Q** Did anyone from the FBI search Ms. Kalichenko's  
16 residence or anyplace where she lived?  
17 **A** **No. No one did. We didn't know where she lived.**  
18 **Q** To your knowledge, did the militsyia conduct any such  
19 search?  
20 **A** **Not to my knowledge.**  
21 **(Whereupon, at this time there was a pause in**  
22 **the proceedings.)**  
23 **Q** One last question, sir, I hope.  
24 Did you ever actually see the child depicted in  
25 the video?

Angelini-Redirect/Kabrawala

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1 **A I never saw the child in person.**  
2 MR. LATO: Nothing further.  
3 MR. KABRAWALA: Briefly, Judge.  
4 THE COURT: Yes.  
5 Redirect?  
6 MR. KABRAWALA: Yes.  
7  
8 REDIRECT EXAMINATION  
9 BY MR. KABRAWALA:  
10 **Q** On cross-examination, Agent, you were asked a number  
11 of questions about searches that could have been done on  
12 electronic devices of Ms. Kalichenko, or her house.  
13 Can you tell us why you didn't conduct those  
14 searches?  
15 MR. LATO: Objection.  
16 THE COURT: Why don't you approach.  
17  
18 (Whereupon, at this time the following took  
19 place at the sidebar.)  
20 THE COURT: Do you know what the answer to the  
21 question will be?  
22 MR. KABRAWALA: Yes.  
23 THE COURT: What is it?  
24 MR. KABRAWALA: She was under investigation  
25 herself and she was going to be arrested, and they didn't

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1 want to alert her.  
2 They blasted open the door on Kalichenko and --  
3 THE COURT: I don't want hearsay to come out. I  
4 don't know what the answer would be.  
5 MR. KABRAWALA: They wanted to arrest her.  
6 THE COURT: Who is "they"?  
7 MR. KABRAWALA: The FBI wanted to arrest her and  
8 didn't want to tip her off in any way.  
9 THE COURT: You opened the door, and obviously  
10 as to a number of things they didn't do. And under 403 I  
11 don't see a problem with him stating his reason.  
12 MR. LATO: Your Honor, but I had no idea with  
13 that open ended, and he could have said a lot.  
14 THE COURT: All right.  
15  
16 (Whereupon, at this time the following takes  
17 place in open court.)  
18 **Q** Is it fair to say that you didn't search her devices,  
19 her home, because you didn't want to raise Kalichenko's  
20 suspicion?  
21 **A Umm, she made assertions to us as to what we would be**  
22 **looking for. And we felt that -- I mean it would -- we**  
23 **didn't really contemplate alerting her suspicions or**  
24 **anything. She made assertions to us, and we normally --**  
25 **if she made assertions to us as to what was there or not**

Angelini-Redirect/Kabrawala

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1 **there -- she did. And so, you know, she told us what she**  
2 **said was there. And whether it was agitating her, I don't**  
3 **know. But we did consider taking a look into the phones**  
4 **anyhow.**  
5 **Q** Let me put it this way:  
6 Without telling us what you said to anyone in  
7 New York, did you have a discussion about getting her to  
8 come to New York because she was under indictment?  
9 **A She was interested in travelling to the US.**  
10 **During the discussions I had with her, it was**  
11 **limited to maybe it was possible that you would help**  
12 **through the legal process. Not very much.**  
13 **Q** Do you know whether Kalichenko ultimately voluntarily  
14 came to the United States?  
15 **A Sorry. Can you repeat the question?**  
16 **Q** To your knowledge -- withdrawn.  
17 Did Kalichenko voluntarily come to the United  
18 States, to your knowledge?  
19 MR. LATO: Objection.  
20 THE COURT: Sustained.  
21 **Q** Would you agree that searching her home would have  
22 alerted Kalichenko that she was under suspicion in the US?  
23 MR. LATO: Objection to the form.  
24 THE COURT: Sustained.  
25 **Q** What if any effect would searching the defendant's

Angelini-Recross/Lato

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1 home -- withdrawn.  
2 What if any effect would searching Kalichenko's  
3 home in the Ukraine have on an investigation concerning  
4 Ms. Kalichenko?  
5 MR. LATO: Objection.  
6 THE COURT: Sustained.  
7 **Q** Do you know if Kalichenko had been arrested here in  
8 the U?  
9 **A I do know. Yes, she has been.**  
10 MR. KABRAWALA: Nothing further.  
11 THE COURT: Any recross?  
12 MR. LATO: Yes, your Honor.  
13  
14 RECROSS-EXAMINATION  
15 BY MR. LATO:  
16 **Q** From the time that you met Ms. Kalichenko until  
17 today, to your knowledge has the FBI or the militsya ever  
18 searched her residence or any of her devices in the  
19 Ukraine?  
20 **A No. Not to my knowledge.**  
21 MR. LATO: No further questions.  
22 THE COURT: Anything further?  
23 MR. KABRAWALA: Just one question. Briefly,  
24 Judge.  
25

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1 FURTHER REDIRECT EXAMINATION  
 2 BY MR. KABRAWALA:  
 3 **Q** Do you know if the FBI searched her devices that she  
 4 brought to the US with her?  
 5 **A I don't know.**  
 6 MR. KABRAWALA: Nothing further.  
 7 THE COURT: Mr. Lato?  
 8 MR. LATO: Nothing, your Honor.  
 9 THE COURT: All right.  
 10 You may step down.  
 11 (Whereupon, the witness leaves the witness  
 12 stand.)  
 13 THE COURT: Next witness.  
 14 MR. KABRAWALA: The government calls Robert  
 15 Egan.  
 16 THE COURT: Please step up to the witness stand  
 17 and remain standing for the oath.  
 18 Please raise your right hand.  
 19  
 20 R O B E R T E G A N,  
 21 called as a witness, having been first  
 22 duly sworn, was examined and testified  
 23 as follows:  
 24 THE COURT: Please be seated.  
 25 Please state your name and spell your last name

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1 for the record.  
 2 THE WITNESS: It is Robert Egan, E-G-A-N.  
 3 THE COURT: Mr. Egan, please lean forward so you  
 4 are close to the microphone so we can all hear you.  
 5 THE WITNESS: Okay.  
 6  
 7 DIRECT EXAMINATION  
 8 BY MR. KABRAWALA:  
 9 **Q** Good afternoon.  
 10 **A Good afternoon.**  
 11 **Q** Where do you work?  
 12 **A I work for Cablevision.**  
 13 **Q** How long have you worked for Cablevision?  
 14 **A 18 years.**  
 15 **Q** Where is Cablevision based?  
 16 **A We are in Bethpage, New York.**  
 17 **Q** And what is your job title at Cablevision?  
 18 **A I'm a security manager.**  
 19 **Q** And what sort of company is Cablevision?  
 20 **A We are a cable company. We provide television,**  
 21 **internet and telephone services.**  
 22 **Q** And with respect to the internet service that you  
 23 provide, is there a particular brand or name associated  
 24 with the product?  
 25 **A Yes. Our internet product is called Optimum On Line.**

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1 **Q** And what is the email address associated with Optimum  
 2 On Line customers?  
 3 **A I believe you are referring to our domain name.**  
 4 **Q** Yes.  
 5 **A It is optonline.net, and we also use optimum.com.**  
 6 **Q** Can you briefly describe what your duties and  
 7 responsibilities are in -- as a security manager with  
 8 Cablevision?  
 9 **A As a security manager I help the company with**  
 10 **technical matters involving what we call internet abuse,**  
 11 **internet security related matters.**  
 12 **In addition to that I also respond to legal**  
 13 **process, such as my appearance here today.**  
 14 **Q** So just to clarify, what made you come here today?  
 15 **A I received a subpoena.**  
 16 **Q** And in addition to a subpoena calling for your  
 17 testimony here today, were you required to produce any  
 18 information for a particular email address or a customer  
 19 on Optimum On Line?  
 20 **A Yes.**  
 21 **Q** And what kind of information were you subpoenaed to  
 22 testify about?  
 23 **A Subscriber information related to an email address.**  
 24 **Q** What is the email address?  
 25 **A It was joeval5@optonline.net.**

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1 **Q** I will show you two exhibits, 200-A and 200-B.  
 2 (Handed to the witness.)  
 3 **Q** Do you recognize those two items?  
 4 **A I do.**  
 5 **Q** And with respect to both of them, were they created  
 6 and maintained in the regular course of Cablevision's  
 7 business?  
 8 **A Yes.**  
 9 MR. KABRAWALA: Move to admit.  
 10 MR. LaPINTA: No objection.  
 11 THE COURT: They are admitted, 200-A and 200-B.  
 12 **Q** I want to show you 200-B.  
 13 (Whereupon, Government's Exhibits 200-A and  
 14 200-B were received in evidence.)  
 15 (Whereupon, at this time there was a pause in  
 16 the proceedings.)  
 17 **Q** Let's actually start with 200-A.  
 18 MR. LaPINTA: Judge, may we approach briefly?  
 19  
 20 (Whereupon, at this time the following took  
 21 place at the sidebar.)  
 22 MR. LaPINTA: I apologize. I was a little  
 23 confused as to which documents were which exhibits.  
 24 The witness list I have just states in a blurb  
 25 what it is without much detail.



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1 I want to object -- I'm objecting to the  
 2 introduction of these two exhibits into evidence.  
 3 There has been case law in this Circuit  
 4 regarding this very issue of account information  
 5 regarding, in this case, Cellular One records, indicating  
 6 the name of an applicant and address and the service it is  
 7 from. It has limited value in terms of what the  
 8 information -- the accuracy of the information, without  
 9 knowing who opened the account, whether false  
 10 identification was given. There is room for inaccuracy  
 11 here.  
 12 Merely because an account was opened in  
 13 someone's name and address doesn't indicate that that  
 14 actual person was the person that opened the account?  
 15 MR. KABRAWALA: Which case are you talking  
 16 about?  
 17 MR. LATO: It is United States against McIntire,  
 18 a Tenth Circuit case from --  
 19 MR. BODE: Do you have a copy of the case?  
 20 MR. LATO: No. I just have the blurb of the  
 21 case.  
 22 MR. KABRAWALA: What I can proffer is, first of  
 23 all, the defense will be able to cross that.  
 24 And 200-B shows the account was paid for,  
 25 thousands of dollars. And I will ask the witness about

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1 that.  
 2 If they want to cross and argue someone else was  
 3 paying the account for the last 12 years, let them.  
 4 MR. BODE: Counsel didn't provide the case so we  
 5 are in a vacuum. But I would be shocked if it is not a  
 6 case of free internet service. This case was the internet  
 7 was provided to Mr. Valerio's house for 12 years.  
 8 THE COURT: Overruled.  
 9 MR. LaPINTA: Your Honor, there was an improper  
 10 foundation at this point in terms of developing the  
 11 procedure of opening the account.  
 12 THE COURT: That is a different objection.  
 13 MR. KABRAWALA: I will ask him how is this  
 14 information collected.  
 15 THE COURT: All right.  
 16 You will have to lay the foundation how the  
 17 account is opened. But the objection otherwise goes to  
 18 the weight notwithstanding the Tenth Circuit case that I'm  
 19 not familiar with.  
 20 I'm pretty confident the Second Circuit case on  
 21 this says if they can properly lay the foundation, that  
 22 your objection just goes to the weight.  
 23 MR. LaPINTA: Thank you.  
 24 THE COURT: Okay.  
 25

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1 (Whereupon, at this time the following takes  
 2 place in open court.)  
 3 BY MR. KABRAWALA:  
 4 Q Referring to Government's Exhibits A and B -- sorry,  
 5 200-A and 200-B, do you know how long the account was  
 6 opened for?  
 7 A Yes.  
 8 Q Can you tell us?  
 9 A **This Cablevision account was created 8/23/2002, on or**  
 10 **about.**  
 11 Q And it was open for about 12 years; is that fair to  
 12 say?  
 13 A Yes.  
 14 Q And was it paid for?  
 15 A **Yes, it was.**  
 16 Q Is there a reason why Cablevision in the normal  
 17 course of its business would retain information about who  
 18 paid for the account and what physical address is  
 19 associated with the account?  
 20 A Yes.  
 21 Q Generally speaking, why would a company hold on to  
 22 that information?  
 23 A **As far as physical address goes, we would always need**  
 24 **to know where we are supplying services. One example is**  
 25 **where to send our technician to service the account if**

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1 **there was an issue.**  
 2 Q Why would Cablevision care whether an account was  
 3 paid for 12 years?  
 4 A **We are in the business to make money.**  
 5 Q So is it fair to say -- withdrawn.  
 6 MR. KABRAWALA: Move to admit.  
 7 MR. LaPINTA: I renew my objection.  
 8 THE COURT: Please approach again.  
 9 Sorry, members of the jury.  
 10  
 11 (Whereupon, at this time the following took  
 12 place at the sidebar.)  
 13 THE COURT: The objection was to laying a  
 14 foundation for the procedure for someone supplying the  
 15 information to Cablevision. I don't think you covered  
 16 that with him. In other words, how do they get the  
 17 information from the customer?  
 18 MR. KABRAWALA: All right.  
 19 THE COURT: Also, there is an objection to the  
 20 actual business record foundation.  
 21 MR. LaPINTA: Yes.  
 22 THE COURT: You have to establish it is  
 23 contemporaneously recorded as well.  
 24 MR. KABRAWALA: Thank you, Judge.  
 25

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1 (Whereupon, at this time the following takes  
2 place in open court.)  
3 **Q** With respect to Government's Exhibit 200-A, referring  
4 to that.  
5 How was the information supplied for that  
6 exhibit, that is the account number, subscriber name,  
7 address and phone number?  
8 **A This document was produced as a result of the**  
9 **subpoena that we have requested this information,**  
10 **specifically for the email address which was collected**  
11 **from our systems, kept in the normal course of business.**  
12 **Q** And Cablevision's systems, how do those systems  
13 obtain the information that is provided in  
14 Government's Exhibit 200-A?  
15 **A If you are referring to the subscriber information as**  
16 **far as the name and address on the account, this**  
17 **information is provided to us at the time the subscriber**  
18 **signs up for service.**  
19 **Q** Who is it typically provided by?  
20 **A It is typically provided by the person whose name is**  
21 **on the account. It is always provided by the person whose**  
22 **name is on the account.**  
23 **Q** Is it verified in any way, generally speaking?  
24 **A A physical check is done of the identification.**  
25 **Q** And is the information contained in

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1 Government's Exhibit 200-A -- you said that it was  
2 recorded at the time of the transaction. But is it  
3 maintained in the regular course of business?  
4 **A It is.**  
5 MR. KABRAWALA: Move to admit 200-A.  
6 MR. LaPINTA: Renew the application -- sorry, my  
7 objection.  
8 THE COURT: The objection is overruled for the  
9 reasons I indicated at the sidebar.  
10 200-A and 200-B are admitted.  
11 (Whereupon, Government's Exhibits 200-A and  
12 200-B were received in evidence.)  
13 MR. KABRAWALA: Thank you.  
14 We will publish Government's Exhibit 200-A.  
15 (Whereupon, the exhibit/exhibits were published  
16 to the jury.)  
17 **Q** What is the email address set forth in 200-A?  
18 **A It is joeval5@optonline.net.**  
19 **Q** Can one or more person have the same email address  
20 through optonline.net at a given time?  
21 **A We assign each instance of an email address to one**  
22 **account only.**  
23 **Q** Why is that?  
24 **A That would allow us to provide email service to the**  
25 **specific individual, a specific individual.**

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1 **Q** I understand you testified you conducted a search of  
2 Cablevision's records to determine the account and  
3 subscriber information associated with the account  
4 joeval5@optonline.net?  
5 **A Yes.**  
6 **Q** I want you to read aloud what that subscriber account  
7 information is for the record, please.  
8 **A The account number?**  
9 **Q** Go ahead.  
10 **A 07840-220293-04. The subscriber on the account is**  
11 **Joe Valerio.**  
12 **Address is 3 High Gate Drive, Smithtown, New**  
13 **York 11787.**  
14 **We have a telephone number provided,**  
15 **(631) 265-2379.**  
16 **Q** What are the dates of the subscriber -- withdrawn.  
17 How long was this account active?  
18 **A It was approximately 12 years.**  
19 **Q** What dates?  
20 **A On or about August 23, 2002, through March 19th,**  
21 **2014.**  
22 **Q** Referring to Government's Exhibit 200-B, which I will  
23 publish.  
24 (Whereupon, the exhibit/exhibits were published  
25 to the jury.)

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1 **Q** Do you recognize this document?  
2 **A I do.**  
3 **Q** Generally speaking, what is it?  
4 **A It is a basic form of payment used to pay for the**  
5 **account, 7840-220293-4.**  
6 **Q** Was the account paid for?  
7 **A It was.**  
8 **Q** Fair to state that thousands of dollars were paid to  
9 maintain this account?  
10 **A That is fair to say, yes.**  
11 **Q** All right.  
12 Did there come a time that Cablevision received  
13 a search warrant?  
14 **A Yes.**  
15 **Q** And did Cablevision review its records associated  
16 with -- withdrawn.  
17 Which email account was the search warrant for?  
18 **A It was for the same account as mentioned previously,**  
19 **the joeval5@optonline.net account.**  
20 **Q** And did Cablevision produce a response to the search  
21 warrant?  
22 **A Yes.**  
23 **Q** I'm showing you what is marked as  
24 Government's Exhibit 200.  
25 (Handed to the witness.)

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- 1 Q Do you recognize that compact disk?
- 2 A Yes.
- 3 Q What is it?
- 4 A This disk contains email content as requested by the
- 5 search warrant, and an address book.
- 6 Q Does it contain any other information such as other
- 7 data associated with emails?
- 8 A There is actual email content, and the headers
- 9 associated with the email content.
- 10 Q What is a header?
- 11 A A header is data attached to email messages that kind
- 12 of describes where it was from and where it was sent to.
- 13 Q And is the information data email that are contained
- 14 in Government's Exhibit 200, are they captured at the time
- 15 that they are created?
- 16 A Yes.
- 17 Q And are they maintained in the regular course of
- 18 Cablevision's business?
- 19 A Yes.
- 20 MR. KABRAWALA: Move to admit.
- 21 THE COURT: Any objection?
- 22 MR. LaPINTA: One moment, please, your Honor.
- 23 (Whereupon, at this time there was a pause in
- 24 the proceedings.)
- 25 MR. LaPINTA: Objection.

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- 1 May we approach?
- 2
- 3 (Whereupon, at this time the following took
- 4 place at the sidebar.)
- 5 MR. LaPINTA: You are ready for the first part
- 6 of it?
- 7 MR. LATO: Yes.
- 8 To admit the emails en masse creates several
- 9 potential problems. Hearsay problems. For instance, if
- 10 Kalichenko was saying things that is not in furtherance of
- 11 the conspiracy, we have potential 403 problems such as
- 12 what we objected to that contains inflammatory stuff that
- 13 has little or no probative value.
- 14 I think some of these may definitely come in,
- 15 but I think we have to go through one at a time. We are
- 16 objecting to allowing all of the emails on this disk to
- 17 come in at this time.
- 18 THE COURT: Why wasn't this done prior to trial?
- 19 I don't understand why we are having this conversation at
- 20 sidebar prior -- in the middle of trial.
- 21 MR. KABRAWALA: We told the defense and provided
- 22 them copies of the specific emails we are going to be
- 23 using, there is no issue here.
- 24 MR. LaPINTA: That is not all the specific
- 25 emails.

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- 1 MR. KABRAWALA: The jury is not going to open
- 2 the disks.
- 3 We are going to be showing the jury very
- 4 specific emails, we can certainly evaluate the emails on a
- 5 case by case.
- 6 We already told the defense and provided copies
- 7 of those emails.
- 8 We want all the records to come in at this point
- 9 so later on when we introduce the emails there is not an
- 10 authenticity objection.
- 11 THE COURT: You said all the emails?
- 12 MR. KABRAWALA: Yes, all the emails preserved on
- 13 their server.
- 14 THE COURT: If I admit this, whatever you are
- 15 going to use this for, the jury can say we want to see
- 16 every email and then there is a problem.
- 17 I understand you are laying a foundation by
- 18 introducing the individual emails. But their objection is
- 19 to every email coming in.
- 20 MR. BODE: They are objecting to authenticity
- 21 and every little device to --
- 22 THE COURT: I didn't hear this to be an
- 23 authenticity objection.
- 24 MR. KABRAWALA: As long as we are on the same
- 25 page that there is not going to be an authenticity

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- 1 objection later on --
- 2 THE COURT: This is a 403 objection?
- 3 MR. LATO: Yes, potential hearsay, not 901.
- 4 MR. KABRAWALA: If there is, I don't want to
- 5 have to call the witness back.
- 6 THE COURT: They just said they are not
- 7 objecting to authenticity.
- 8 MR. KABRAWALA: We are not admitting every
- 9 email?
- 10 THE COURT: That's right. But there is no
- 11 objection that these are Cablevision's records of emails
- 12 on this account.
- 13 MR. LATO: Correct.
- 14 MR. BODE: Was there another piece?
- 15 MR. LaPINTA: That is fine. We will leave it at
- 16 that. Thank you.
- 17
- 18 (Whereupon, at this time the following takes
- 19 place in open court.)
- 20 BY MR. KABRAWALA:
- 21 Q I will now show you two exhibits, marked
- 22 Government's Exhibit 205-A, and 211-A.
- 23 (Handed to the witness.)
- 24 Q Referring to Government's Exhibit 205-A, do you
- 25 recognize this document?

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1 A I do.

2 Q What is it?

3 A These are email headers.

4 Q So just to remind us, an email header is basically  
5 data that is contained within the search warrant return  
6 that is Government's Exhibit 200?

7 A Yes.

8 Q And if the information contained on  
9 Government's Exhibit 205, was it created and maintained  
10 within the regular course of Cablevision's business?

11 A Yes.

12 MR. KABRAWALA: Move to admit.

13 THE COURT: Any objection?

14 MR. LaPINTA: Just I renew my objection stated  
15 at the sidebar.

16 THE COURT: You are not objecting to the  
17 foundation question, correct?

18 MR. LaPINTA: I'm objecting to the foundation  
19 question because I'm of the opinion --

20 MR. BODE: Judge, can we approach, please?

21 THE COURT: Yes.

22

23

24

25

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1 (Whereupon, at this time the following took  
2 place at the sidebar.)

3 THE COURT: I understood your objection that you  
4 are objecting to the reliability of these kind of  
5 exhibits.

6 MR. LaPinta: That is one objection. I have a  
7 number of objections.

8 The other objection is you have allowed the  
9 admission of these documents into evidence as a business  
10 record.

11 THE COURT: Correct.

12 MR. LaPINTA: I objected, and you overruled my  
13 objection.

14 There is no evidence at all that the information  
15 obtained from a subscriber looking into the account is to  
16 an employee of Cablevision.

17 We don't know who the employee is who took the  
18 information. All they know is that an ID is furnished.  
19 That is what is in the record.

20 For a business record it has to be furnished to  
21 an employee of Cablevision in the regular course of  
22 business.

23 THE COURT: Okay.

24 I don't want to have any sidebars over this.

25 The rule requires there to be established that

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1 it was kept in the course of the regularly conducted  
2 business activity, and it was the regular practice of the  
3 business activity to keep it, and it was made on or around  
4 the time that it was provided, at the time the information  
5 was provided.

6 So for each of these documents that is what you  
7 need to establish. I don't want to keep having sidebars.

8 MR. KABRAWALA: If I establish that, which I  
9 will, are we coming back to say that the content  
10 information can't come in?

11 THE COURT: I'm now saying any objection -- you  
12 can make any objection for the record to preserve it. But  
13 any objection to the content coming in for the lack of the  
14 reliability of the record goes to the weight.

15 But I thought he said that it came from  
16 Cablevision. You should establish each of these -- that  
17 the information in each of these records, including the  
18 ones previously admitted, are provided to someone at  
19 Cablevision. Or how does Cablevision -- he said provided  
20 by the person opening the account.

21 MR. KABRAWALA: It is in the regular course of  
22 business.

23 MR. BODE: That is fine, Judge. We will go step  
24 by step by step.

25 I will ask for all the objections to be made

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1 now. They are just thinking of new ones as they go, I  
2 think.

3 MR. LaPINTA: It is not a new one. I made it --

4 THE COURT: You have to go through how they  
5 receive it, who received it at Cablevision and how they  
6 received this.

7 MR. LaPINTA: I will not do this again, I  
8 promise. But my objection is 803(6) of the Federal Rules  
9 of Evidence regarding the admissibility of these business  
10 records for failure of the government to establish that  
11 the opening of the account was made to an employee of  
12 Cablevision, who the employee was, where they were  
13 located, who opened the account? There is nothing in the  
14 record.

15 THE COURT: You should establish, and this was  
16 asked once, how they received -- who at Cablevision  
17 receives that information to open the account. Not the  
18 name of the person.

19 MR. BODE: There is no requirement for the name.

20 THE COURT: Basically the procedure.

21 MR. BODE: We will go step by step, Judge.

22 THE COURT: All right.

23

24

25

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- 1 (Whereupon, at this time the following takes  
2 place in open court.)
- 3 **Q** We will go back to talking about 200-A and 200-B,  
4 what we were referring to earlier.
- 5 Let's say a customer comes to open an account,  
6 would you generally describe what that customer has to do,  
7 how they set up accounts with Cablevision.
- 8 **A Generally they would contact either customer service**  
9 **or our sales department.**
- 10 **From that point either of two things can happen.**
- 11 **The person can be directed to come into one of**  
12 **our, what we call, Cablevision, Optimum walk-in centers**  
13 **where they can sign up in person. Or they may decide to**  
14 **send a salesperson to the home to make the sale.**
- 15 **Q** And the information that is obtained -- withdrawn.  
16 Is there information obtained from the customer  
17 at the initial stage?
- 18 **A Yes.**
- 19 **Q** Now, regardless of whether the potential customer  
20 comes into a Cablevision sales office or whether  
21 Cablevision sends someone out, do Cablevision employees  
22 that are tasked to get new customers for Optimum On Line  
23 accounts, do they receive any information from customers?
- 24 **A Yes.**
- 25 **Q** And is that information captured or retained --

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- 1 captured, taken in -- in the regular course of  
2 Cablevision's business?
- 3 **A Yes.**
- 4 **Q** Now, once a person creates an account, you mentioned  
5 earlier that there is an ID check.
- 6 Within the regular course of Cablevision's  
7 business, does the ID information and other customer  
8 information, is that obtained?
- 9 **A Yes.**
- 10 **We, at a very minimum, we store name and**  
11 **address.**
- 12 **Q** And is it in the regular course of business for  
13 Cablevision to look at some ID that is provided by the  
14 potential customer?
- 15 **A Yes.**
- 16 **Q** And all of this information, is it kept -- withdrawn.  
17 Is it all -- all this information is collected  
18 generally at the same time that the information is given  
19 over to Cablevision by the customer?
- 20 **A Sorry, would you repeat?**
- 21 **Q** Sure.
- 22 All of this information provided by a customer,  
23 is it taken in generally at the same time that the  
24 customer gives the information, recorded simultaneously?
- 25 **A Yes.**

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- 1 **Q** Or contemporaneously?
- 2 **A It is essentially that a form is filled out.**
- 3 **Q** Okay.
- 4 And the form, is that retained in the regular  
5 course of business or -- withdrawn.
- 6 Is the information from the form put into  
7 Cablevision's system?
- 8 **A Yes.**
- 9 **Q** And is that information retained in the regular  
10 course of business?
- 11 **A Yes.**
- 12 MR. KABRAWALA: Judge, we renew our application  
13 to admit Government's Exhibit 200-A and 200-B.
- 14 THE COURT: The objection is reserved.
- 15 MR. KABRAWALA: Okay.
- 16 THE COURT: We were up to the same questions as  
17 205-A and 211-A.
- 18 MR. KABRAWALA: Well, with respect to  
19 Government's Exhibit 200 --
- 20 **Q** You testified that that is what Cablevision produced  
21 with regard to a search warrant for the content of the  
22 data; is that correct?
- 23 **A That's correct.**
- 24 **Q** And is that information that is on 200-A, is it  
25 recorded around the same time, contemporaneously with what

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- 1 is received? That is, does the information -- is the  
2 information captured around the same time it is received?
- 3 **A In general, yes. I would assume there is a slight**  
4 **delay, maybe a day or two before the information -- if it**  
5 **was by a sales field representative, there may be a lag of**  
6 **a day or two until that information is put into our**  
7 **systems, but in general, yes.**
- 8 **Q** Which are you referring to?
- 9 **A 200-A.**
- 10 **Q** Okay.
- 11 Let's go back. I'm talking about 200, which is  
12 the CD.
- 13 **A Okay, sorry.**
- 14 **Q** The question is: Is the information and data  
15 contained within that CD recorded about the same time when  
16 it is created?
- 17 **A These are email records. This information is the**  
18 **same with respect to our systems when emails are received**  
19 **or sent. That is to say that it is almost instantaneous.**
- 20 **Q** Almost instantaneously recorded on Cablevision's  
21 systems?
- 22 **A Yes.**
- 23 **Q** Is it kept and maintained within Cablevision's  
24 systems?
- 25 **A These emails, we save this data on our email servers,**

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1 **so it would be available for our customers to view when**  
 2 **they decide to log in to view their email.**  
 3 **So, yes, it is kept as an ordinary part of our**  
 4 **email service business.**  
 5 MR. KABRAWALA: Move to admit again, Judge.  
 6 THE COURT: Again, the objection preserved at  
 7 the sidebar is overruled. And Government's Exhibit --  
 8 205-A is from 200 or separate documents?  
 9 MR. KABRAWALA: Yes, 205-A and 211-A are  
 10 contained within 200.  
 11 THE COURT: Is that correct, sir?  
 12 THE WITNESS: Yes.  
 13 THE COURT: They are admitted.  
 14 (Whereupon, Government's Exhibits 205-A and  
 15 211-A were received in evidence.)  
 16 **Q** Take a look at 200-B for a moment, please.  
 17 That is essentially billing information?  
 18 **A Yes.**  
 19 MR. KABRAWALA: I will publish it.  
 20 (Whereupon, the exhibit/exhibits were published  
 21 to the jury.)  
 22 THE WITNESS: Sorry?  
 23 **Q** I'm just publishing it for the jury.  
 24 **A All right.**  
 25 **Q** Is the customer billed on a monthly basis? How does

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1 that happen?  
 2 **A We charge on a monthly basis. We bill on a monthly**  
 3 **basis.**  
 4 **Q** Okay.  
 5 And if the account -- if an account is paid for  
 6 the month in which there is a bill, is payment information  
 7 recorded contemporaneously to the payment?  
 8 **A Can you repeat one more time?**  
 9 **Q** Sure.  
 10 When someone pays an account -- a Cablevision  
 11 account holder pays for their monthly bill, is the fact of  
 12 the payment reported contemporaneously with their payment?  
 13 **A Yes.**  
 14 **Q** And is the payment record maintained within the  
 15 regular course of Cablevision's business?  
 16 **A Yes.**  
 17 **Q** And I think you testified that Cablevision generally  
 18 speaking wants to know whether their customers have paid  
 19 or not?  
 20 **A It is a general business practice, yes.**  
 21 **Q** They are a for-profit company?  
 22 **A That's correct.**  
 23 **Q** I want to just have you look at  
 24 Government's Exhibit 25-A, the email header information,  
 25 and you explained that an email header is basically

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1 associated with emails.  
 2 (At this time a document was exhibited on  
 3 courtroom screen.)  
 4 **Q** According to the exhibits, when was the email sent?  
 5 **A So 205-A, the sent date --**  
 6 **Q** Do you see that?  
 7 **A Yes. It was July 22nd, 2012.**  
 8 **Q** All right.  
 9 And do you see where it says email header?  
 10 It says received from. And then there is a  
 11 series of numbers.  
 12 Do you recognize what those numbers are?  
 13 **A I do.**  
 14 **Q** What is that number?  
 15 **A It is what we call an IP address.**  
 16 **Q** IP address?  
 17 **A Yes.**  
 18 **Q** Is that also known as an internet protocol address?  
 19 **A Yes.**  
 20 **Q** What is an IP address, generally speaking?  
 21 **A In general, every computer connected to an internet**  
 22 **compatible network is assigned an IP address.**  
 23 **Q** Okay.  
 24 And when it says received from this IP address,  
 25 what does that mean? Does that mean information is

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1 received from the IP address?  
 2 **A This is a stamp added by our web mail.**  
 3 **Q** When is the stamp added?  
 4 **A I'm sorry?**  
 5 **Q** When is the stamp added?  
 6 **A The stamp was July 22.**  
 7 **Q** So contemporaneously with the email, July 22, 2012?  
 8 **A Yes.**  
 9 **Q** All right.  
 10 What does it mean generally when it says  
 11 received from this IP address?  
 12 **A It is the IP address of the PC that is connected to**  
 13 **our web mail system and was used to send an email.**  
 14 **Q** So is it fair to say that the received from language  
 15 of the header basically means when Cablevision receives  
 16 the information about the email?  
 17 **A The date in the received line.**  
 18 **Q** All right.  
 19 I want you to read aloud the IP address  
 20 associated with this email.  
 21 **A 69, dot, 118, dot, 191, dot, 98.**  
 22 **Q** Now, to your knowledge, is it an IP address that  
 23 exclusively controls -- only controlled by Cablevision?  
 24 **A It is.**  
 25 **Q** And where does Cablevision operate? Where does it



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1 have the IP address?

2 **A Cablevision -- we are a cable provider in the general**

3 **tri-state area.**

4 **Q** What do you mean by the tri-state area?

5 **A Portions of Connecticut, portions of all of Long**

6 **Island, a small section of New York City and New Jersey.**

7 **Q** All right.

8 So the tri-state area means New York,

9 Connecticut and New Jersey?

10 **A Yes.**

11 **Q** Do you have any IP addresses anywhere else?

12 **A No.**

13 **Q** And just for the record itself, can you please read

14 aloud the subject line according to this IP header, 205-A.

15 **A It is FW, colon, RE, colon, FWB; where's [REDACTED]**

16 **information and the other stuff, question mark, question**

17 **mark, question mark. And Sveta's, Sveta's info.**

18 **Q** Who is the email from?

19 **A From joeval5@optonline.net.**

20 **Q** Who is it to?

21 **A I will have to spell the email address.**

22 **Q** Go ahead.

23 **A K-A-L-I-C-H-E-N-K-O-E-S, at mail.R-U.**

24 **Q** I will now show you what is admitted as

25 Government's Exhibit 211-A.

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1 (At this time a document was exhibited on

2 courtroom screen.)

3 **Q** What is this?

4 **A It is another set of email headers.**

5 **Q** And I see that there is another IP address there.

6 And it is not the same as the last one.

7 **A It is different.**

8 **Q** Read it, please.

9 **A 24, dot, 186, dot, 38, dot, 241.**

10 **Q** And is this an IP address exclusively controlled by

11 Cablevision?

12 **A Yes.**

13 **Q** The same questions as the last time.

14 Cablevision operates in the tri-state area?

15 **A Yes.**

16 **Q** This IP address is maintained by Cablevision

17 somewhere in that tri-state area?

18 **A Yes.**

19 **Q** Read to me the to and the from of the message,

20 please. Who is it from and who is it to?

21 **A From the email address joeval5@optonline.net. And it**

22 **is to the email address K-A-L-I-C-H-E-N-K-O-E-S at**

23 **mail.R-U.**

24 **Q** All right.

25 What is the date of the email?

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1 **A March 28, 2012.**

2 THE COURT: It is 1:00 o'clock.

3 MR. KABRAWALA: I have a couple of more

4 questions.

5 THE COURT: And is cross going to be more than

6 five minutes?

7 MR. LaPINTA: Yes, your Honor.

8 THE COURT: We will take the lunch break.

9 We will meet at 2:15.

10 Do not discuss the case. And have a nice lunch.

11 (Whereupon, at this time the jury leaves the

12 courtroom.)

13 (Luncheon Recess.)

14

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1 AFTERNOON SESSION

2

3 THE COURT: Please be seated. Before we bring

4 the jury out any issues we need to address?

5 MR. BODE: Mr. Egan, the Cablevision witness,

6 the defendant's object to Government's Exhibit 200 coming

7 into evidence because it contains all the e-mail. But

8 with respect to 200, the e-mails, how they were

9 established, established that they are business records

10 and that they are authentic in terms of search warrant

11 terms. So at the end of Mr. Egan's testimony we've

12 established that defense can obviously still make 401 and

13 403 objections to those e-mails but I'd like a ruling from

14 the Court that we've established the authenticity of the

15 business records, any e-mails contained in Exhibit 200,

16 otherwise we'll have to keep Mr. Egan here throughout the

17 entire trial.

18 THE COURT: I thought, correct me if I'm wrong,

19 I was a little confused, because I thought there weren't

20 any authentication arguments and Mr. LaPinta started

21 making some authentication arguments, on the issue of the

22 actual e-mails themselves, I think Mr. Lato said "we're

23 not raising an objection to that" at the sidebar.

24 MR. LATO: Yes.

25 MR. KABRAWALA: We put into evidence some emails

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Egan - Direct/Kabrawala

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1 contained within 200.  
 2 THE COURT: 205.  
 3 MR. KABRAWALA: THERE will not be an  
 4 authenticity or business record objection to those  
 5 e-mails.  
 6 MR. LATO: Correct. Your Honor ruled on the  
 7 business records, I had conceded the 901, so the only  
 8 question is 401 and 403.  
 9 MR. BODE: Because the defense made other  
 10 e-mails that haven't not marked at this point based upon  
 11 what the defense has told me, so anything within 200.  
 12 THE COURT: Yes.  
 13 The only issues reserved for Exhibit 200, are  
 14 the issues of relevance and 403. All the other issues  
 15 have been either resolved or on consent or on ruling.  
 16 MR. KABRAWALA: With that, we're ready to  
 17 proceed.  
 18 THE COURT: What do you have. A couple  
 19 questions?  
 20 MR. KABRAWALA: Sorry, Judge?  
 21 THE COURT: A couple more questions with regard  
 22 to direct?  
 23 MR. KABRAWALA: Yes, your Honor.  
 24 (Whereupon, the jury at this time enters the  
 25 courtroom.)

Egan - Direct/Kabrawala

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1 THE COURT: Members of the jury, as you recall,  
 2 before the lunch break we were on direct examination with  
 3 Mr. Egan, and we'll continue at this point.  
 4 **ROBERT EGAN,**  
 5 having been previously sworn, resumed the stand  
 6 and testified further as follows:  
 7 DIRECT EXAMINATION  
 8 BY MR. KABRAWALA: (Continued)  
 9 **Q** Mr. Egan, before the lunch break you testified about  
 10 two particular internet protocol addresses identified in  
 11 Government's Exhibit 211-A and 205-A; is that fair to say?  
 12 **A Yes.**  
 13 **Q** I will show you those IP addresses again, and I'll  
 14 show you the e-mails addresses again.  
 15 211-A is the IP address 24.186.38.241.  
 16 205-A is the IP address 69.118.191.98.  
 17 Did I read that correctly?  
 18 **A Yes.**  
 19 **Q** All right. And you testified you recognized these  
 20 two IP addresses as belonging to Cablevision in the  
 21 tristate area?  
 22 **A Yes.**  
 23 **Q** New York and New Jersey?  
 24 **A Yes.**  
 25 **Q** Is it possible that the computer that connected

1 directly to Cablevision's server immediately before the  
 2 e-mails were sent was located outside the United States?  
 3 MR. LATO: Objection.  
 4 THE COURT: Lay a foundation for that.  
 5 BY MR. KABRAWALA:  
 6 **Q** Well, you testified earlier that Cablevision operates  
 7 IP addresses only in the tristate area; is that correct?  
 8 **A Correct.**  
 9 **Q** Looking at the two IP addresses that we discussed,  
 10 the one starting with 24 and the one starting with 69 --  
 11 withdrawn.  
 12 How was the IP address information captured in  
 13 the header information on Government's Exhibit 205-A and  
 14 211-A?  
 15 **A In these particular examples, when the client that is**  
 16 **sending the e-mail through our web mail application, when**  
 17 **the e-mail client or the sender, the sending computer,**  
 18 **sends through our web mail server, it establishes the**  
 19 **connection directly to that server.**  
 20 **Q** Let me stop you right there.  
 21 What is a client? What is an e-mail client?  
 22 **A An e-mail client is a program used to send e-mail.**  
 23 **Q** What is a server?  
 24 **A A server in general is a larger system that serves --**  
 25 **would provide the service to multiple clients.**

Egan - Direct/Kabrawala

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1 **Q** All right. So a server basically enables multiple  
 2 e-mail programs to connect to it?  
 3 **A Correct.**  
 4 **Q** Now, you mentioned the word "web mail." What is  
 5 that?  
 6 **A Web mail is a particular form of access that we**  
 7 **provide to our customers to access and send their e-mail.**  
 8 **Q** Let me back up for a second.  
 9 When people check their mail through  
 10 Cablevision, generally speaking, do they have the option  
 11 of checking their e-mail on line?  
 12 **A Yes.**  
 13 **Q** Is that through web mail?  
 14 **A That's one way.**  
 15 **Q** What is another?  
 16 **A Via an external e-mail client, something that the**  
 17 **user or customer would install on a PC.**  
 18 **Q** Something like Outlook Express?  
 19 **A For example, yes.**  
 20 **Q** And generally speaking, what is Outlook Express?  
 21 **A Outlook Express is an e-mail client.**  
 22 **Q** What does that enable a customer of Cablevision to  
 23 do?  
 24 **A To send and receive e-mail.**  
 25 **Q** All right. So you can check your e-mail through your

Egan - Direct/Kabrawala

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1 computer using one of these programs like Outlook Express.  
 2 Alternatively, if you are not at the computer,  
 3 you can check your e-mail using the web mail program?  
 4 **A Yes.**  
 5 **Q** Using the two IP addresses we looked at set forth in  
 6 Government's Exhibit 205-A and 211-A, looking at those IP  
 7 addresses, is it possible that the computer that directly  
 8 connected with Cablevision's server immediately before  
 9 sending those 2-E-mails was located outside the United  
 10 States?  
 11 MR. LATO: Objection.  
 12 THE COURT: Overruled.  
 13 **A No.**  
 14 **Q** It's not possible that those e-mails were sent --  
 15 withdrawn.  
 16 Let me ask you this: Does Cablevision  
 17 maintain -- withdrawn.  
 18 If a person has a Cablevision account and they  
 19 are able to check their e-mail through whatever means,  
 20 does Cablevision maintain the e-mails forever?  
 21 **A No.**  
 22 **Q** Why not?  
 23 **A We hold the e-mail on our servers up until the point**  
 24 **that our customer chooses to delete the e-mail from our**  
 25 **server.**

Egan - Direct/Kabrawala

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1 **Q** So customers can delete their e-mails?  
 2 **A Yes.**  
 3 **Q** After they are deleted, are they maintained forever  
 4 and forever in your servers?  
 5 **A After it is deleted, no.**  
 6 **Q** You mentioned that the user customer can use Outlook  
 7 Express to retrieve e-mails. Is it fair to say?  
 8 **A Yes.**  
 9 **Q** So basically Outlook Express can pull e-mails off the  
 10 server and put them on a user's computer?  
 11 **A Yes.**  
 12 **Q** You can send and receive e-mails from your home  
 13 computer using Outlook Express?  
 14 **A Yes.**  
 15 **Q** If someone uses Outlook Express to retrieve e-mails  
 16 from a Cablevision account, presuming they do not delete  
 17 or have their computers set to delete e-mails from  
 18 Cablevision servers, can the e-mail be in both places,  
 19 that is, the computer and also on the web mail?  
 20 **A On the computer that the e-mail client is installed**  
 21 **on, yes.**  
 22 **If the user chooses to retain or save e-mails**  
 23 **after retrieving, it would live or reside in both**  
 24 **locations.**  
 25 **Q** And if, let's say, a user uses -- withdrawn.

Egan - Direct/Kabrawala

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1 Let's say someone who has a Cablevision account  
 2 uses Outlook Express to send and receive e-mails. Would  
 3 those -- withdrawn.  
 4 MR. KABRAWALA: Just one moment.  
 5 **Q** Just one more question.  
 6 You testified that this e-mail account,  
 7 joeval5@optonline.net, has been an account with  
 8 Cablevision for approximately 12 years, correct?  
 9 **A Yes.**  
 10 **Q** And based on your review of records that actually had  
 11 been admitted in evidence --  
 12 **A I'd like to make a correction.**  
 13 **Q** Sure.  
 14 **A The Cablevision account has existed for approximately**  
 15 **12 years.**  
 16 **Q** Who is the account holder?  
 17 **A The name on the account was Joe Valerio.**  
 18 **Q** That has been paid for the last 12 years?  
 19 **A Yes.**  
 20 **Q** Thousands of dollars have been paid to maintain that  
 21 account in the last 12 years in the name of Joe Valerio?  
 22 **A Approximately.**  
 23 MR. KABRAWALA: No further questions.  
 24 THE COURT: Any cross-examination?  
 25 MR. LAPINTA: Yes.

Egan - Cross/LaPinta

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1 CROSS-EXAMINATION  
 2 BY MR. LAPINTA:  
 3 **Q** Good afternoon, Mr. Egan.  
 4 **A Good afternoon, sir.**  
 5 **Q** My name is Anthony LaPinta.  
 6 I'll ask you a series of questions regarding  
 7 your direct examination from just now and earlier this  
 8 morning, okay?  
 9 **A Okay.**  
 10 **Q** Please listen to my questions and answer them as  
 11 thoroughly as possible. If possible, answer it "yes" or  
 12 "no." Okay?  
 13 **A Yes.**  
 14 **Q** Sir, you testified on direct examination that your  
 15 position at Cablevision, you have three roles there; is  
 16 that right? Three different job roles?  
 17 **A I mentioned that I'm security manager, I respond to**  
 18 **legal process, and I'm -- and I have an information**  
 19 **security role.**  
 20 **Q** You are here today because you were served with a  
 21 subpoena, correct?  
 22 **A Correct.**  
 23 **Q** And you are here today in your capacity as a  
 24 custodian of records, correct?  
 25 **A Correct.**

Egan - Cross/LaPinta

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- 1 Q You are not here today in your capacity as a security
- 2 personnel at Cablevision, right?
- 3 A **Correct.**
- 4 Q You are not here today in your position as any type
- 5 of security manager at all, correct?
- 6 A **Correct.**
- 7 Q In fact, before being issued this subpoena by the
- 8 Government, you did not have any direct information or
- 9 knowledge about this particular account; is that right?
- 10 A **No.**
- 11 Q Is that right?
- 12 A **That is correct.**
- 13 Q Now, in fact all of the information that you've given
- 14 in this courtroom is not based on your firsthand
- 15 information; isn't that right?
- 16 A **I don't understand the question.**
- 17 Q I'll rephrase it.
- 18 Everything that you've testified to here today
- 19 is regarding records that have been kept in the
- 20 Cablevision database; isn't that right?
- 21 A **Yes.**
- 22 Q You yourself, as an employee of Cablevision, did not
- 23 deal with any of these particular tasks or account
- 24 information set up that was involved here; is that right?
- 25 A **I did not participate in the creation of these**

Egan - Cross/LaPinta

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- 1 **records.**
- 2 Q Very good.
- 3 Now, so your knowledge about this e-mail account
- 4 is based on records only, correct?
- 5 A **Correct.**
- 6 Q And to the extent of your knowledge, if it is in your
- 7 records, you would know of it, right?
- 8 A **Correct.**
- 9 Q And if it's not in your records, obviously, then, you
- 10 wouldn't know it, correct?
- 11 A **Correct.**
- 12 Q You do know that the account was opened on
- 13 October 23, 2012, correct -- August of 2002. I'm sorry.
- 14 A **I'm sorry, you said several dates.**
- 15 Q Let me rephrase.
- 16 A **Okay.**
- 17 Q The account was opened in August of 2002; is that
- 18 right?
- 19 A **That's correct.**
- 20 Q Where was the account opened?
- 21 A **The account was created for the address 3 High Gate**
- 22 **Drive, Smithtown, New York. That is the service and**
- 23 **billing address.**
- 24 Q Where was that account opened?
- 25 Was it opened at a Cablevision facility or

Egan - Cross/LaPinta

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- 1 opened at that Smithtown address?
- 2 A **I don't know.**
- 3 Q That information is not contained in your database,
- 4 correct?
- 5 A **I don't know.**
- 6 Q You testified that it was opened by a Cablevision
- 7 employee; is that right?
- 8 A **I testified that there were two methods of**
- 9 **possibility. Either a salesperson in person or perhaps a**
- 10 **direct sign-up in our -- one of our Cablevision Optimum**
- 11 **stores.**
- 12 Q Either method, it would require a Cablevision
- 13 employee, right?
- 14 A **Correct.**
- 15 Q Do you know who the Cablevision employee was that
- 16 opened this account?
- 17 A **I do not.**
- 18 Q Do you have any information whether that employee is
- 19 a verified employee of Cablevision?
- 20 A **I don't know.**
- 21 Q Are your service personnel, the people that perform
- 22 physical service to the cable lines, fixing cable boxes,
- 23 are they qualified to open accounts as well?
- 24 A **Can you repeat the question?**
- 25 Q Service personnel, people that run cable lines

Egan - Cross/LaPinta

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- 1 outside, run cable lines to the house, are they qualified
- 2 Cablevision employees to open accounts?
- 3 A **I don't know.**
- 4 Q Do you know whether it was a serviceman that opened
- 5 this account or not?
- 6 A **I do not know.**
- 7 Q You testified on direct examination that to open a
- 8 Cablevision account requires identification, correct?
- 9 A **Correct.**
- 10 Q What form of identification was produced when this
- 11 account was opened?
- 12 A **For this particular situation --**
- 13 Q For this account, sir.
- 14 A **I don't have that information available.**
- 15 Q Do you know whether that identification -- well,
- 16 withdrawn.
- 17 Do you know whether, in fact, an identification
- 18 was produced when this account was opened?
- 19 A **I don't know.**
- 20 Q So if I understand you correctly, this account could
- 21 have been opened by a person that does not normally --
- 22 withdrawn.
- 23 This account could have been opened by a service
- 24 technician that is not qualified or has the responsibility
- 25 of opening accounts?

Egan - Cross/LaPinta

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1 **A So in general --**  
 2 **Q** Yes?  
 3 **A -- that does not happen, but I cannot say yes or no.**  
 4 **Q** So it could happen?  
 5 **A I don't know.**  
 6 **Q** Well, it either could or it can't, right?  
 7 **A I don't know.**  
 8 **Q** Would your database involve information or include  
 9 information regarding the form of identification that was  
 10 presented upon the opening of the account?  
 11 **A It's a possibility.**  
 12 **Q** But again, you don't know?  
 13 **A Correct.**  
 14 **Q** The Assistant United States Attorney asked you  
 15 questions regarding the payment of this account. Do you  
 16 recall that?  
 17 **A Yes.**  
 18 **Q** The thousands of dollars that have been paid; do you  
 19 remember that?  
 20 **A I do.**  
 21 **Q** Who made those payments?  
 22 **A (Perusing) So the payments, according to our**  
 23 **records, were made from an electronic checking account.**  
 24 **Q** Who made the payments?  
 25 **A I don't know.**

Egan - Cross/LaPinta

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1 **Q** You were then asked questions regarding the retrieval  
 2 of certain e-mails that were part of this account,  
 3 correct?  
 4 **A Correct.**  
 5 **Q** And we're speaking of, so we have no doubt, account  
 6 04840. Those are the first five numbers?  
 7 **A Correct.**  
 8 **Q** You identified that account by that account number,  
 9 right?  
 10 **A Yes.**  
 11 **Q** You've identified this account by the information on  
 12 the account, right? Name and address, correct?  
 13 **A Yes.**  
 14 **Q** Your database does not have information as to who  
 15 uses that e-mail account, correct?  
 16 **A That is correct.**  
 17 **Q** Your database does not have information as to who has  
 18 access to that e-mail account, correct?  
 19 **A That is correct.**  
 20 **Q** You are not able to identify who the user was of that  
 21 account for any of the e-mails that you have been  
 22 presented with here; is that right? The identity of the  
 23 individual that accessed the account, correct?  
 24 **A Whomever has the account credentials, being the user**  
 25 **name and password, would have access to the account.**

Egan - Cross/LaPinta

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1 **Q** And you certainly don't know who has that  
 2 information; is that right?  
 3 **A That's correct.**  
 4 **Q** In fact, there could be a number of people who have  
 5 that information, right? Could be?  
 6 **A In this situation, I don't know. In general, yes,**  
 7 **that could be the case.**  
 8 **Q** So if I understand you correctly, anyone with  
 9 knowledge of user name and password could access that  
 10 account, right?  
 11 **A That is correct.**  
 12 **Q** You've testified about these headers that are  
 13 included on the top of these e-mails, right?  
 14 **A Yes.**  
 15 **Q** And that is, for lack of a better expression,  
 16 computer language that identifies the sources of this  
 17 information, right?  
 18 **A Correct.**  
 19 **Q** And that information is very helpful to you in terms  
 20 of understanding where these e-mails came from, right?  
 21 **A Correct.**  
 22 **Q** But it is limited in that regard as well, isn't it?  
 23 **A I don't understand the question.**  
 24 **Q** Well, you can only determine what IP address is used  
 25 on those e-mails, right?

Egan - Cross/LaPinta

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1 **A We can determine, or anyone, for that matter, can**  
 2 **determine IP address that was used to originate the**  
 3 **connection.**  
 4 **There is some other information contained within**  
 5 **this header, such as date and time the message was sent,**  
 6 **and also the method that was used to send the message.**  
 7 **In this case it is clear that the Laslow,**  
 8 **L-A-S-L-O-W, web mail client was used to send these**  
 9 **messages.**  
 10 **Q** That's your web database; is that right?  
 11 **A Yes.**  
 12 **Q** Now --  
 13 THE COURT: Which exhibit were you referring to?  
 14 THE WITNESS: Actually both of them. The one  
 15 marked 21-A and the other marked 205-A.  
 16 THE COURT: You mean 211-A?  
 17 THE WITNESS: 211-A and 205-A, yes.  
 18 **Q** That information contained in the header does not  
 19 identify a particular computer that is used to either  
 20 develop or receive that e-mail, correct?  
 21 **A The IP address --**  
 22 **Q** Can you answer it "yes" or "no," if you can?  
 23 Does it identify a particular computer used to  
 24 either develop the e-mail, create it, or receive it?  
 25 **A It is not a yes or no question.**

Egan - Cross/LaPinta

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- 1 Q Does it identify the computer that it goes to, not
- 2 the e-mail address used?
- 3 A **It does not identify the computer that it goes to.**
- 4 **It does not identify the computer -- the person who is**
- 5 **receiving the message, if that's the question you are**
- 6 **asking.**
- 7 Q Let's break it down.
- 8 It clearly identifies the e-mail addresses;
- 9 would you agree with me?
- 10 A **It does.**
- 11 Q It clearly identifies the IP addresses, correct?
- 12 A **It does.**
- 13 Q And it also identifies the date, time and methodology
- 14 used to either send it or receive it, correct?
- 15 A **Correct.**
- 16 Q It does not contain what particular device is used to
- 17 either send it or to receive it, correct?
- 18 A **That is correct.**
- 19 Q What I mean by "device," I mean either a computer --
- 20 right? A computer is a device, right?
- 21 A **Yes.**
- 22 Q Or perhaps a cell phone is another device, correct?
- 23 A **That is correct.**
- 24 Q You don't know whether these e-mails were sent from
- 25 the computers, phones, or any other technology, correct?

Egan - Cross/LaPinta

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- 1 A **Correct.**
- 2 Q Regarding the information on the header, you don't
- 3 know whether these e-mails were in fact opened or viewed;
- 4 isn't that right?
- 5 A **That is correct.**
- 6 Q You don't know whether these e-mails, if they
- 7 contained an attachment, whether the attachments were
- 8 opened or viewed; is that right?
- 9 A **(Perusing.)**
- 10 Q Not whether they were sent; whether they are viewed.
- 11 A **I don't know. That's right.**
- 12 Q Let's take a step back.
- 13 When I use the word "attachment," are we in
- 14 agreement it could be either a document or video that is
- 15 made part of the e-mail? Correct?
- 16 A **Correct.**
- 17 Q And it is very common for e-mails to obtain -- to
- 18 have attachments to it, correct?
- 19 A **That is correct.**
- 20 Q There is nothing that you can derive from your
- 21 database that could tell us whether video attachments were
- 22 in fact viewed, not sent, right?
- 23 A **Correct.**
- 24 Q The United States Attorney asked you questions about
- 25 IP addresses in particular.

Egan - Cross/LaPinta

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- 1 Your IP address from your Cablevision account is
- 2 the address that starts with 69; is that right?
- 3 A **My?**
- 4 Q The address in question here, the e-mail address in
- 5 question here. "Yours" meaning the Cablevision IP
- 6 address.
- 7 A **So in 205-A, the 69 IP address, yes.**
- 8 Q The other IP address is from the other person
- 9 involved in this dialogue, correct?
- 10 A **I don't know.**
- 11 Q Okay. Is there a second IP address that is involved
- 12 in these e-mails that you've been shown?
- 13 A **There are two IP addresses that I've been shown.**
- 14 Q Okay.
- 15 Are both IP addresses Cablevision accounts?
- 16 A **They are both IP addresses that are controlled by**
- 17 **Cablevision.**
- 18 Q The headers that have been presented to you for your
- 19 analysis, they contain two different e-mail addresses,
- 20 correct?
- 21 A **Each header contains two different e-mail addresses,**
- 22 **yes.**
- 23 Q One is an Optimum e-mail account, right?
- 24 A **Yes.**
- 25 Q The other is not an Optimum e-mail account, correct?

Egan - Cross/LaPinta

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- 1 A **That's correct.**
- 2 Q It is an e-mail account that is -- I'll say it --
- 3 I'll spell it. K-A-L-I-C-H-E-N-K-O-E-S at mail, M-A-I-L,
- 4 dot R-U, correct?
- 5 A **Correct.**
- 6 Q As part of your subpoena, you have done no
- 7 investigation of any information regarding that e-mail,
- 8 correct?
- 9 A **That is correct.**
- 10 Q You don't know who the holder of that account is, do
- 11 you?
- 12 A **I do not.**
- 13 Q You don't know where the address of that account
- 14 emanates from, correct?
- 15 A **I can infer --**
- 16 Q The particular address, location; not country.
- 17 A **No.**
- 18 Q But you can derive from the RU at the tail of the
- 19 e-mail as to what country; is that right?
- 20 A **That's correct.**
- 21 Q And that is Ukraine?
- 22 A **That is --**
- 23 Q Europe?
- 24 A **Yes.**
- 25 Q So you cannot even tell us if it is Ukraine?



Egan - Cross/LaPinta

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1 **A That's right.**  
2 **Q** What countries -- you don't have to name them in  
3 particular. To the best of your understanding, how many  
4 countries are involved in the tail e-mail dot RU?  
5 **A I don't know.**  
6 **Q** More than ten?  
7 **A I don't know.**  
8 **Q** More than 20?  
9 **A I don't know.**  
10 **Q** You don't know the sender of those e-mails are from  
11 that RU address, you don't know, correct?  
12 **A In these two exhibits, the sender.**  
13 **Q** The identity of the person, not the e-mail address?  
14 **A The sender of these messages was**  
15 **joeval5@optonline.net.**  
16 **Q** And the receiver was the e-mail address that I just  
17 told you, the RU address?  
18 **A That's correct.**  
19 **Q** You were asked a question this afternoon after lunch  
20 about e-mails referenced to you that were sent from  
21 another country, and you said you had no knowledge of  
22 that; is that right?  
23 Yes or no?  
24 **A That was not how the U.S. Attorney presented this to**  
25 **me, so I'm not sure -- I'm unsure what the question is.**

Egan - Cross/LaPinta

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1 **Q** Well, he asked you a question about these e-mails  
2 being referenced to another country. Do you remember?  
3 **A Yes. He asked me to describe or say the two**  
4 **addresses, which I did, and I did not say if it was from a**  
5 **country. I don't believe that country was even a part of**  
6 **that.**  
7 **Q** But you don't know the country; is that correct?  
8 **A That is correct.**  
9 **Q** Now, this Optimum account that you have here, you  
10 said that your database -- that the holder of the account  
11 has the ability to delete e-mails, right?  
12 **A Yes.**  
13 **Q** From the information that you have before you, do you  
14 have any information regarding whether e-mails from the  
15 Optimum account were deleted.  
16 **A I don't have details at one point if it existed, but**  
17 **these messages were not deleted.**  
18 **Q** But all the data that you've looked at and compiled  
19 in these exhibits, you cannot tell these jurors whether  
20 these e-mails or any e-mails from this particular account  
21 were ever deleted; is that correct?  
22 **A That's correct.**  
23 MR. LAPINTA: Thank you, sir. Nothing further.  
24 THE COURT: Redirect?  
25 MR. KABRAWALA: Briefly.

Egan - Redirect/Kabrawala

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1 REDIRECT EXAMINATION  
2 BY MR. KABRAWALA:  
3 **Q** The IP addresses, both of them that you've been  
4 testifying about, the Cablevision IP addresses --  
5 **A Yes.**  
6 **Q** -- are IP addresses that are located in the tristate  
7 area?  
8 **A Yes.**  
9 **Q** In both of the e-mail addresses, that is, the  
10 exhibits we've been discussing, 205-A and 211-A, were  
11 those e-mails sent from IP addresses controlled by  
12 Cablevision in the tristate area?  
13 **A Yes.**  
14 **Q** Who sent them according to the IP address -- I mean  
15 the e-mail address? Which e-mail sent them?  
16 **A The e-mail address that sent the messages was**  
17 **joeval5@optonline.net.**  
18 **Q** Is it possible that the IP address that -- withdrawn.  
19 Is it possible that the two IP addresses that  
20 are in those exhibits that I mentioned were generated by a  
21 sender who was located outside of the United States?  
22 **A These IP addresses cannot be used typically outside**  
23 **of the United States. They cannot be used physically**  
24 **outside of our footprint.**  
25 **Q** Your tristate area?

Egan - Recross/LaPinta

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1 **A Our tristate area.**  
2 **Q** Is it fair to say that service for the e-mail address  
3 joeval5@optonline.net was paid for over a course of  
4 approximately 12 years and that the registered address  
5 associated with that account is 3 High Gate Drive in the  
6 name of Joe Valerio?  
7 **A That's how we captured these checking account**  
8 **payments, the electronic checking account payments. We**  
9 **applied them to the account 7840220293-4.**  
10 **Q** So that's fair to say based on your review of the  
11 records?  
12 **A Yes.**  
13 MR. KABRAWALA: Nothing further.  
14 THE COURT: Mr. LaPinta, anything further?  
15 RECROSS-EXAMINATION  
16 BY MR. LAPINTA:  
17 **Q** Optimum online has a web page in existence, correct?  
18 **A Yes.**  
19 **Q** A person could access an e-mail account on that web  
20 page, correct?  
21 **A Yes.**  
22 **Q** That web page could be accessed in the United States,  
23 correct?  
24 **A Yes.**  
25 **Q** That web page could be accessed outside of the United

Egan - Recross/LaPinta

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1 States, correct?

2 **A Correct.**

3 **Q** So anywhere in the world, that web page of yours  
4 could be accessed, correct?

5 **A Yes.**

6 **Q** And if accessed anywhere in the world, any e-mail  
7 account with Cablevision could likewise be accessed,  
8 correct?

9 **A Correct.**

10 **Q** So it is untrue that an e-mail sent or received using  
11 a Cablevision address could only have been sent in the  
12 tristate area; is that right?

13 **A In this case, no.**

14 **Q** It's not right.

15 **A It's not right because we clearly see the originating**  
16 **IP addresses stamped in the header. So from these headers**  
17 **we can tell that, one, someone used our web mail service,**  
18 **which I think you are referring to as the Optimum web**  
19 **page, to send these messages from the IP addresses that**  
20 **you can see here from these exhibits.**

21 **Q** You are referring to the particular ones that are in  
22 front of you, right?

23 **A 211-A and Exhibit 205-A.**

24 **Q** And there are many other e-mails associated with this  
25 account, correct?

Angelini - Direct/Kabrawala

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1 **A I don't know.**

2 MR. LAPINTA: I'll leave it at that.

3 Thank you.

4 THE COURT: Anything else?

5 MR. KABRAWALA: No, Judge. Thank you.

6 We recall Special Agent in Charge Peter  
7 Angelini.

8 THE COURT: Sir, if you can raise your right  
9 hand again, please.

10 **PETER ANGELINI,**

11 called as a witness, having been previously  
12 duly sworn, was examined and testified  
13 further as follows:

14 THE COURT: Again, state your name for the  
15 record for the reporter.

16 THE WITNESS: My name is Peter Angelini,  
17 A-N-G-E-L-I-N-I.

18 THE COURT: Go ahead.

19 DIRECT EXAMINATION

20 BY MR. KABRAWALA: (Continued)

21 **Q** Before the break, you had mentioned that you met a  
22 woman by the name of Olena Kalichenko as you were an  
23 assistant legal cachet for the FBI in the Ukraine.

24 **A Yes.**

25 **Q** You mentioned that Kalichenko provided you with a

Angelini - Direct/Kabrawala

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1 number of items, including a video disk that is already in  
2 evidence; is that right?

3 **A Yes, sir.**

4 **Q** You also testified that she forwarded it to you, a  
5 number of e-mails; is that right?

6 **A Yes.**

7 **Q** Let's go over some of those e-mails with you.

8 Showing you now what has been marked as  
9 Government's Exhibit 2, some packets, Government's  
10 Exhibit 2-B, and Government's Exhibit 2-D.

11 Just a moment.

12 Take a look at Government's Exhibit 2-B.

13 **A Yes.**

14 **Q** Is that a true and correct copy of an e-mail you  
15 received from Ms. Kalichenko?

16 **A Yes, it is.**

17 MR. KABRAWALA: And the Government moves to  
18 admit this at this time.

19 THE COURT: This is one of the e-mails that is  
20 on Government's Exhibit 200, from Cablevision?

21 MR. KABRAWALA: The original message is -- this  
22 is an e-mail that Special Agent Angelini received from  
23 Kalichenko, the original e-mail, yes.

24 THE COURT: The original e-mail.

25 MR. KABRAWALA: Yes. And it will come in later

Angelini - Direct/Kabrawala

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1 on in this trial as well.

2 THE COURT: Any objection?

3 MR. LAPINTA: One moment, please.

4 MR. LATO: No objection.

5 THE COURT: 2-B is admitted.

6 (Whereupon, Government Exhibit 2-B was received  
7 in evidence.)

8 BY MR. KABRAWALA:

9 **Q** All right. Showing you now -- I'm actually going to  
10 publish it.

11 Is it fair to say that this is the original  
12 letter -- well, let me back up.

13 When did you get this message from Kalichenko.

14 What is that date that you got it on?

15 **A On the information it says it was e-mailed on**  
16 **November 12th, so we received it probably the 12th.**

17 **Q** I'm asking you to look over here. From Olena  
18 Kalichenko, okay?

19 **A I'm sorry, November 8th.**

20 **Q** It's fair to say you got this following this meeting  
21 with Kalichenko on November 8, 2013?

22 **A Yes.**

23 **Q** What is the original message header information? Who  
24 is that from?

25 **A It states it is from Joe Valerio.**

Angelini - Direct/Kabrawala

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1 Q What is the e-mail address mailed to?  
2 A Mailed to joeval5@optonline.net.  
3 Q What date was it sent from Joe Valerio?  
4 A Tuesday, July 17, 2012.  
5 Q Who was it sent to?  
6 A Kalichenko@mail.ru.  
7 Q What is the subject of the message?  
8 A It said: Forward Anna's passport.  
9 Q I want you to read from the beginning, "Helena, how  
10 are you doing?" all the way to where it says "pantry."  
11 A "Helena, how are you doing? I'm glad you are safe in  
12 Kiev. And I had sent you a text message earlier today.  
13 Did you get that? I got your videos, which were very  
14 delicious. I just didn't see the rooms and bedroom,  
15 especially when you stood in Turkey. Not a problem. I'm  
16 trusting that you were clean in Turkey? Remember, it's  
17 the man that delivers the disease and the woman  
18 harbors-carries and stores the disease like food in the  
19 pantry."  
20 Q Now, I want to bring you down the page a little  
21 further. I want you to read from where it says "enjoy" --  
22 start reading from actually right down here where it says  
23 "The videos you sent..."  
24 A Where do you want me to finish?  
25 Q Finish when you get to the next page where it says

Angelini - Direct/Kabrawala

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1 "dripping like that."  
2 Read it aloud.  
3 A Beginning with "The videos you sent"?  
4 Q Yes, please.  
5 A "The videos you sent by cell phone camera are  
6 perfect, and there is no need for the expense of another  
7 camera when you have done a terrific job with the cell  
8 phone camera. I have a new cell phone which allows me to  
9 transfer your video to my e-mail, and the screen is bigger  
10 to view. Plus, you can have endless video time per  
11 session with the cell phone camera.  
12 "As far as the script, do the same with our  
13 little [REDACTED] delicious little pussy, you know, in the  
14 tub. The way you would eat her, so sweet, of course,  
15 panty hose and tights, you 2 dance. Place toys inside  
16 your pussy, and have our little [REDACTED] pull them out of  
17 your wet pussy, EMMM. Tell me how you loved when you eat  
18 her little pussy and how wet your pussy was - correct?  
19 "I told you how I can't wait to make hard luv to  
20 you as you eat our little [REDACTED]'s delicious little pussy.  
21 I can't wait to try it too. So no worries about a \$600 to  
22 \$1300 camera. I will send you some cash Tuesday eve for  
23 your time making videos with [REDACTED] times at the pool  
24 showers and dressing rooms, et cetera. Buy your mom a  
25 special gift and little [REDACTED] a big toy, doll or clothes.

Angelini - Direct/Kabrawala

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1 I can't wait to see you as well in Miami. Yes,  
2 absolutely.  
3 "Our plans are on schedule for the end of July,  
4 with the gratitude of your visa. The day before you do  
5 the videos at the pool, dressing, then with [REDACTED], let me  
6 know, and I will instruct you how do it.  
7 "I want you to try to walk topless in a woman's  
8 dressing room or pool changing room and shower, trying to  
9 rub by accident your big luscious tits in a young lady's  
10 face or back. IM. Your pussy is dripping, I bet."  
11 Q All right. I'll show you what has been marked as  
12 2-E.  
13 Take a look at that.  
14 Did you receive that e-mail from Kalichenko?  
15 A Yes, I did.  
16 Q And when did you receive that e-mail?  
17 A I received it on November 8, 2013.  
18 Q November 8th?  
19 A Yes, sir.  
20 Q So the same day that you had met with her the first  
21 time?  
22 A Yes.  
23 MR. KABRAWALA: Just a moment. I'm looking for  
24 an extra copy.  
25 You know what I'll do, I'll take your copy back,

Angelini - Direct/Kabrawala

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1 put it on the screen and read it from there.  
2 I move to admit this exhibit.  
3 THE COURT: Any objection?  
4 MR. LATO: One moment, please.  
5 I'm sorry, your Honor, may we have an extra  
6 moment here?  
7 MR. KABRAWALA: Can you read from there?  
8 THE WITNESS: Sure, I can read when you put it  
9 up.  
10 MR. LATO: Your Honor, I have an objection to  
11 portions of this, and I think we need a sidebar.  
12 THE COURT: It's time to take the afternoon  
13 break.  
14 We'll take the afternoon break. Don't discuss  
15 the case.  
16 (Whereupon, at this time the jury exits the  
17 courtroom.)  
18 MR. LATO: Does your Honor have a copy?  
19 THE COURT: Yes.  
20 This is 2-E?  
21 MR. LATO: Yes.  
22 THE COURT: Okay. What is the portion?  
23 MR. LATO: The 404(b) -- 404 portion. In other  
24 words, I have no objection to the portion where  
25 Mr. Valerio is asking for pictures of Kalichenko and her

Angelini - Direct/Kabrawala

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1 daughter. That is relevant to the Government's case. But  
2 the other portion, such as "Where the fuck are you  
3 writing" e-mail is showing that Mr. Valerio is a bad guy,  
4 that has no probative value with respect to the production  
5 of the video and is entirely inflammatory under 403.

6 So I think portions of this, in fairness to the  
7 Government, should come in, and other portions would be  
8 unfavorably prejudicial and should not.

9 MR. KABRAWALA: Judge, this is literally  
10 inextricably intertwined with the portion that comes in.  
11 It's part of the same e-mail. The jury should see the  
12 tone, the entire e-mail. It's this tone that  
13 characterizes the relationship between the defendant  
14 Kalichenko, and it will be apparent in every single one of  
15 the e-mails this is the tone the defendant used directing  
16 her to make child pornography with a video -- with a  
17 child.

18 So the portion "Where the F are you," it is all  
19 part of this. It has to come in.

20 THE COURT: I'll overrule the objection.

21 Under 403, the nature of the relationship  
22 between the defendant and Ms. Kalichenko establishes who  
23 the authors of the e-mails are and the nature of the  
24 relationship between them with respect to the alleged  
25 criminal activity.

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1 So the nature of that relationship, in my view,  
2 is inextricably intertwined with the particular charges in  
3 this case, and any concern about unfair prejudice with  
4 respect to the tone, the language used, in my view, is  
5 not -- the probative value is not substantially outweighed  
6 by any unfair prejudice because of the nature of the tone  
7 used in the e-mails. Especially in light of the other  
8 parts of the e-mails, that certainly comes into evidence  
9 with respect to the child pornography itself.

10 So I'm overruling the objections. If there is  
11 any reference in these e-mails to asking for other things  
12 to be done, that would be -- in my view would be a  
13 different analysis. This only relates to a portion of the  
14 e-mail that relates to basically the nature of their  
15 relationship with each other.

16 I'm overruling that objection.

17 Okay. Are there other -- I want to try covering  
18 any objections to any other ones to be used in aid.

19 MR. KABRAWALA: Just a moment.

20 We'll be bringing in one more. It is  
21 Government's Exhibit 5.

22 THE COURT: So you are not offering 2-D?

23 MR. KABRAWALA: I'm sorry?

24 THE COURT: 2-D.

25 MR. KABRAWALA: Honestly, Judge, they are all

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1 contained within Exhibit 2, which comes in. Exhibit 2  
2 comes in.

3 But what we're doing here is first streamlining  
4 it. We're talking about a handful.

5 THE COURT: All the e-mails in 2, the originals  
6 are in the Cablevision disk?

7 MR. KABRAWALA: They are, but of course not the  
8 same exact words because these were forwarded to  
9 Kalichenko.

10 THE COURT: I understand --

11 MR. KABRAWALA: I mean to Angelini.

12 THE COURT: I mean, the substance is the same.

13 MR. KABRAWALA: It is the same. And one of  
14 them, actually a number of them, are also on the  
15 defendant's home computer, as you will see through our  
16 forensic expert.

17 THE COURT: So right now, the ones you'll use  
18 today, I just want to ask the defense if there is an  
19 objection to using 2-D, 5 and 5-A?

20 MR. KABRAWALA: 2-D, 5 and 5-A. Those are the  
21 only ones we'll discuss.

22 THE COURT: What I'd like to give the defense to  
23 do, to go through Government's Exhibit 2 and see if you  
24 have any objection under 403 or 401 to any other e-mails,  
25 other than these before the jury today, and let me know

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1 before the morning.

2 MR. LAPINTA: We'll do so.

3 The problem we have is this: The exhibit list  
4 we received references e-mail dates. The problem with  
5 that is that a lot of these dates have chain e-mails  
6 including other dates. So they are confusing to us which  
7 e-mails we're speaking about.

8 So we'll meet with the Government, preview all  
9 of their e-mails they intend to offer from now going  
10 forward so we don't have to do this each time.

11 MR. KABRAWALA: For the record, Judge, the  
12 Government has provided a very clear exhibit list which  
13 says "e-mail thread start dates," and it has the start  
14 date.

15 We've also provided exhibit numbers as well as  
16 marked exhibits. So any dispute could be be raised awhile  
17 ago.

18 MR. LAPINTA: There's no problem --

19 THE COURT: It's the first day of trial. But in  
20 the future, so we don't have any more sidebars today  
21 looking at particular lines -- I don't want to do that  
22 while the jury is here.

23 MR. LAPINTA: That's why I mentioned that,  
24 Judge.

25 THE COURT: So right now, tell me -- 2-D, I've

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1 overruled the objection.  
 2 And 2-D and 5 and 5-A? Any objection to the  
 3 substance of those?  
 4 MR. LATO: In two minutes I'll have an answer.  
 5 MR. BODE: May we take a break and we'll have an  
 6 answer?  
 7 THE COURT: Who is your next witness after this?  
 8 MR. KABRAWALA: Sorry?  
 9 THE COURT: Who is your next witness?  
 10 MR. KABRAWALA: Western Union. Cheryl Johnson.  
 11 (Whereupon, a recess was taken.)  
 12 THE COURT: Everyone is present, including  
 13 Mr. Valerio.  
 14 So 2-D, 5 and 5-A, any objection?  
 15 MR. LATO: No, your Honor.  
 16 THE COURT: And then we're done with this  
 17 witness?  
 18 MR. KABRAWALA: Yes.  
 19 Are they admitted?  
 20 THE COURT: You will have to admit them in front  
 21 of the jury.  
 22 2-E I'll admit, and you'll admit the rest in  
 23 front of the jury.  
 24 MR. KABRAWALA: Yes, your Honor.  
 25 THE COURT: Bring in the jury, and we'll get

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1 started.  
 2 (Whereupon, Government Exhibit 2-E was received  
 3 in evidence.)  
 4 (Whereupon, the jury at this time enters the  
 5 courtroom.)  
 6 THE COURT: Please be seated.  
 7 Members of the jury, so I'm admitting  
 8 Government's Exhibit 2-E into evidence.  
 9 And you are offering other exhibits?  
 10 MR. KABRAWALA: Yes, Judge. We are offering  
 11 Government's Exhibit 2-D, as in delta, 5 and 5-A.  
 12 MR. LATO: No objection.  
 13 THE COURT: Government's Exhibit 2-D and 5 and  
 14 5-A are also admitted.  
 15 (Whereupon, Government Exhibits 2-D, 5 and 5-A  
 16 were received in evidence.)  
 17 THE COURT: Go ahead.  
 18 MR. KABRAWALA: Thank you.  
 19 BY MR. KABRAWALA:  
 20 Q Referring to Government's Exhibit 2-E, it's fair to  
 21 say you received this e-mail from Kalichenko on  
 22 November 8, 2013?  
 23 A Yes, sir.  
 24 Q And the e-mail is from Joe Valerio at  
 25 joeval5@optonline.net?

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1 A Yes, sir.  
 2 Q Sent on Thursday, September 27, 2012?  
 3 A Yes, sir.  
 4 Q To kalichenkoes@mail.ru?  
 5 A Yes.  
 6 Q No subject?  
 7 A Correct.  
 8 Q I want you to start reading from right where it says  
 9 "hey," all the way to where you get to this triple  
 10 exclamation mark.  
 11 A The first paragraph there?  
 12 Q Where it says, "Hey, you, listen," to where my pen is  
 13 pointing, the triple exclamation mark.  
 14 A Okay.  
 15 "Hey, you, listen now or this will be the last  
 16 time ever...why the fuck are you writing mails at 9:30  
 17 p.m. when your daughter is supposed to be sick? Are you  
 18 starting to be that sneaky bitch again? If so, I will  
 19 drop you on your ass. Better fucking explain. First off,  
 20 I just gave you \$1200 for your family, and you are going  
 21 to fucking work for it, not sit anywhere all fucking day,  
 22 sending out e-mails...I'm asking you now, what the fuck do  
 23 you do all day? And you have produced nothing for me.  
 24 "I want an explanation for all of this now...  
 25 each morning and night you will send me a cell phone video

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1 of you waking up with your daughter, with your tits in her  
 2 mouth, before you go to sleep and wake up. If I don't see  
 3 this each day, I will drop you on your ass."  
 4 Q Now I'll show you Government's Exhibit 2-D.  
 5 Is it fair to say you received this e-mail from  
 6 Olena Kalichenko on November 8, the same day you met with  
 7 her on 2013?  
 8 A Yes.  
 9 Q The original message is from Joe Valerio to  
 10 kalichenkoes@mail.ru dated September 19, 2012?  
 11 A Yes, sir.  
 12 Q The first sentence it says, "Hello there, Olena. How  
 13 are you doing? I hope [REDACTED] is doing much better now. I  
 14 knew somehow she just had a cold. I'm sure it is just a  
 15 change of temp."  
 16 Now, what I want you to do, Agent, I want you to  
 17 read this sentence where I'm pointing where it says, "I  
 18 need to see results," and it ends [REDACTED] It is  
 19 misspelled.  
 20 A "I need to see results. And when your daughter is  
 21 fine and you're prepared, I need to see videos e-mailed to  
 22 me of you and [REDACTED]."  
 23 Q Who is it signed off by?  
 24 A "Be safe. Regards, Joseph."  
 25 Q I want you to read the content of Exhibit 5.



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1 **A The entire?**  
2 **Q** No, I'm sorry. I want you to read it to yourself.  
3 And I'll describe it.  
4 It appears to be an e-mail that Kalichenko sent  
5 to you, Peter Angelini, on Friday, November 8, 2013. And  
6 it looks like there was a forwarded message where it says,  
7 "P-R-I-V-I-T, my dear Joseph."  
8 Do you know what "privit" means?  
9 **A It means hi.**  
10 **Q** What language?  
11 **A I'm sorry, Russian. Hi, hello.**  
12 **Q** It appears the original e-mail was from Joe Valerio  
13 sent to Kalichenko's e-mail address on May 11, 2012. there  
14 is some e-mail content and then there is a forwarding  
15 message.  
16 So it appears the original message was from Joe  
17 Valerio to some other e-mail address; is it fair to say?  
18 **A Yes.**  
19 **Q** I'll just read this aloud. Tell me if I get it  
20 wrong.  
21 "Here is my photo. It's not so good because it  
22 is indoors with no lighting, and I looked tired in the  
23 photo (smiling). Not enough sleep, tired eyes (laughing).  
24 I don't sleep too much. I'm a very energetic man, and my  
25 age is just a number. I don't feel. Lots of hugs,

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1 Joseph."  
2 There was an attachment?  
3 **A Yes.**  
4 **Q** Take a look at Government's Exhibit 5-A.  
5 **A Yes.**  
6 **Q** Is that the attachment?  
7 **A Yes, sir.**  
8 **Q** Can you see that picture?  
9 **A Yes.**  
10 **Q** Do you see that person sitting in the courtroom  
11 today?  
12 **A Yes, sir.**  
13 **Q** Can you point him out, identifying an article of  
14 clothing he's wearing?  
15 **A Seated at the defense table wearing a navy suit, or a**  
16 **dark suit.**  
17 **Q** Speak up.  
18 **A Wearing a navy suit, dark suit, and seated at the far**  
19 **end of the defense table.**  
20 MR. KABRAWALA: For the record, the witness has  
21 identified the defendant, Joseph Valerio.  
22 THE COURT: Yes.  
23 MR. KABRAWALA: All right. There's nothing  
24 further at this time.  
25 THE COURT: Cross-examination?

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1 MR. LATO: One moment, please, your Honor.  
2 No questions, your Honor.  
3 THE COURT: You may step down, sir. Thank you.  
4 THE WITNESS: Thank you.  
5 MR. KABRAWALA: The United States calls Cheryl  
6 Johnson.  
7 THE COURT: Ma'am, can you remain standing when  
8 you get to the witness stand, once you get there.  
9 THE CLERK: Please raise your right hand.  
10 **C H E R Y L J O H N S O N ,**  
11 called as a witness, having been first  
12 duly sworn, was examined and testified  
13 as follows:  
14 THE WITNESS: Cheryl Denise Johnson, C-H-E-R-Y-L  
15 D-E-N-I-S-E J-O-H-N-S-O-N.  
16 THE COURT: You can be seated, Ms. Johnson.  
17 I'll ask pull your chair all the way up to the  
18 mike.  
19 DIRECT EXAMINATION  
20 BY MR. KABRAWALA:  
21 **Q** Ms. Johnson, good afternoon.  
22 **A Good afternoon.**  
23 **Q** Where do you work?  
24 **A Western Union.**  
25 **Q** Can you raise up the mike and speak directly into it?

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1 Did you say Western Union?  
2 **A Yes.**  
3 **Q** Where is that headquartered?  
4 **A Englewood, Colorado.**  
5 **Q** Englewood, Colorado?  
6 **A Yes.**  
7 **Q** What do you do at Western Union?  
8 **A I'm a senior legal analyst.**  
9 **Q** Are you based out of Englewood as well?  
10 **A No.**  
11 **Q** Where are you based out of?  
12 **A Omaha, Nebraska.**  
13 **Q** Briefly describe your educational background.  
14 **A Systems administration in -- bachelor of business**  
15 **administration, Iowa State University. Paralegal**  
16 **certification, Hamline University. Master's of business**  
17 **administration, Bellevue University.**  
18 **Q** What are your duties and responsibilities at Western  
19 Union?  
20 **A I assist counsel in gathering documents and**  
21 **information in response to subpoena requests.**  
22 **Q** Were you subpoenaed to testify here today?  
23 **A Yes.**  
24 **Q** Did Western Union receive a subpoena -- withdrawn.  
25 Did Western Union receive a subpoena in



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1 connection with a particular account or person?

2 **A Yes.**

3 **Q** Who was that person?

4 **A Joseph Valerio.**

5 **Q** All right. I want to back up just a bit and ask you  
6 generally about the nature of Western Union's business.

7 What is it in the business of doing?

8 **A Western Union's business is money transfer or money  
9 services business.**

10 **Q** And generally speaking, how does that money  
11 transmission work? That is, how does a customer use  
12 Western Union's services?

13 **A In most cases customers will go into a Western Union  
14 location, fill out a form, pay over the moneys and fees to  
15 send money, and then the information is entered into  
16 Western Union's computer system.**

17 **A customer can also log into the company's  
18 website and send money via an online transfer.**

19 **Q** In both of those scenarios, whether it is a walk-in  
20 off the street or an online money transfer initiated  
21 through Western Union's website itself, if the information  
22 that is entered into Western Union's database -- is that  
23 entered contemporaneously, that is, around the same time  
24 as --

25 **A Yes --**

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1 **Q** Let me finish the question.

2 -- as the information provided to Western Union?

3 **A Sorry. Yes, that is correct.**

4 **Q** Now, when a customer conducts a transaction through  
5 Western Union, is there any way of telling one transaction  
6 from another?

7 **A Yes. A confirmation number or a money transfer  
8 control number is assigned to each transaction.**

9 **Q** A money transfer control number?

10 **A A money transfer control number.**

11 **Q** I'll abbreviate that as MTCN.

12 That's how you guys refer to it?

13 **A Yes.**

14 **Q** Is that a unique number?

15 **A Yes.**

16 **Q** Why is it a unique number?

17 **A Because it's a confirmation number. Each MTCN is  
18 assigned to each money transfer to identify that  
19 particular transaction.**

20 **Q** I will show you what's been marked as Government's  
21 Exhibit 10, and I'll bring up Government's Exhibit 322.

22 With respect to Government's Exhibit 10, what is  
23 that?

24 **A This is a compact disk that I prepared. It contains  
25 two Excel spreadsheets and, I believe, a letter, a cover**

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1 **letter, and a copy of a subpoena. It is the information  
2 that Western Union provided in response to the subpoena  
3 request.**

4 **Q** And with respect to the transactions that are in the  
5 Excel spreadsheets, that is, the data that was provided by  
6 Western Union, I asked you this earlier: The data that is  
7 captured within that spreadsheet, is it entered into  
8 Western Union's database around the same time as the  
9 transaction?

10 **A Yes.**

11 **Q** Is it in Western Union's regular business activity to  
12 capture and retain that sort of information?

13 **A Yes.**

14 **Q** And is making a record of transactions within the  
15 course of Western Union's business activity?

16 **A Yes.**

17 MR. KABRAWALA: The Government offers Exhibit 10  
18 at this time.

19 MR. LATO: Objection.

20 THE COURT: Why don't you approach.

21 (Whereupon, at this time the following took  
22 place at the sidebar.)

23 (Continued.)

24

25

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1 MR. LATO: This is an improper foundation, and  
2 here's why. Rule 803(6), the business records rule  
3 exception, does not permit the use of outsider  
4 information.

5 What we have here is we have a witness who was  
6 under an obligation to enter into this, but we have no  
7 idea the information that she was given by whom. In other  
8 words, there is no independent evidence that Joseph  
9 Valerio gave this information.

10 At best we have the following: Consistent with  
11 the Second Circuit's decision in United States v. Londano  
12 and United States v. Lieberman, at best, this is  
13 nonhearsay, which would require a limiting instruction to  
14 show that somebody by the name of Joseph Valerio gave a  
15 name, and then the Government could build on that. Not  
16 that it was this Joseph Valerio.

17 What I'm talking about, outsider statements,  
18 there is a First Circuit case from 1999, United States  
19 versus V-I-G-N-E-A-U, that talks about outsider statements  
20 can't come in under 803(6). However, there is no  
21 firsthand information that Mr. Valerio did this.

22 Obviously, it would be an admission by  
23 Mr. Valerio if we could establish somebody with firsthand  
24 knowledge that he was there. We don't know that.

25 That's my objection.

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1 THE COURT: Okay.  
 2 MR. KABRAWALA: Judge, the information, that  
 3 goes to the weight, not the admissibility. They can cross  
 4 this witness all they want about how this information is  
 5 recorded, you know, who gives that information to Western  
 6 Union, but it is admissible.  
 7 THE COURT: Is it similar to the Cablevision  
 8 witnesses?  
 9 Is there any procedures in place like  
 10 Cablevision so they try to verify who the person is.  
 11 MR. KABRAWALA: My understanding, anyone can  
 12 sign on to their website and claim to be anyone, I mean,  
 13 essentially claim to be anyone and do a money transfer.  
 14 What is unique about the situation here is that  
 15 many of the e-mails that came in through Cablevision have  
 16 the same exact tracking number that the defendant is  
 17 e-mailing out.  
 18 THE COURT: What do you mean by "tracking"?  
 19 He makes reference to the Western Union tracking  
 20 number in the e-mail?  
 21 MR. KABRAWALA: Dozens of them. He says, I'm  
 22 sending you money. Come in this date. Here is the  
 23 number.  
 24 MR. LATO: Your Honor, that would allow it to be  
 25 admissible. The Government could build on it.

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1 But in terms of statements of -- I still think a  
 2 limiting instruction should be it is admitted for the  
 3 truth of the matter asserted, that is, it's Joseph  
 4 Valerio.  
 5 It is outside 803(6) if it is somebody by the  
 6 name of Joseph Valerio that gave that name, that is  
 7 obviously nonhearsay. 803(6) is not implicated.  
 8 THE COURT: These are being admitted as business  
 9 records of Western Union, and I'll say something along the  
 10 lines that obviously this witness is not able to verify  
 11 who the person was who was --  
 12 MR. KABRAWALA: That's fine.  
 13 THE COURT: -- who was making the request.  
 14 MR. KABRAWALA: That's fine.  
 15 MR. LATO: Yes.  
 16 (End of sidebar conference.)  
 17 (Continued.)

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1 THE COURT: Members of the jury, sometimes when  
 2 a piece of evidence comes in, you can only consider it for  
 3 a limited purpose, and I'll tell you what that purpose is.  
 4 You cannot consider it for any other purpose other than  
 5 the purpose that I'm instructing you on.  
 6 These records are coming in under the Federal  
 7 Rules of Evidence as business records of Western Union. I  
 8 just want to make sure you understand that they are only  
 9 coming in as what Western Union recorded based upon the  
 10 information what they were provided. However, Western  
 11 Union has no knowledge who the person is who made the  
 12 request based upon their records.  
 13 So it's not coming in for that purpose, to  
 14 establish the identity of the person. They have to  
 15 establish that through other means in terms of who the  
 16 person was who made the request.  
 17 This is simply what they recorded in their  
 18 records when they made the records, and you are only to  
 19 acknowledge it for that purpose.  
 20 That is admitted as Plaintiff's Exhibit 10.  
 21 (Whereupon, Government Exhibit 10 was received  
 22 in evidence.)  
 23 BY MR. KABRAWALA:  
 24 Q Before you came to court, were any money transfers  
 25 associated with this account conducted using Western

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1 Union's website?  
 2 A Yes.  
 3 Q Approximately how many?  
 4 A 46.  
 5 Q And I want you to take a look at Government's  
 6 Exhibit -- you know what? Let me ask this.  
 7 Look at Government's Exhibit 322.  
 8 Have you seen that before?  
 9 A I've seen the information on the exhibit before.  
 10 Q Okay. Is that a summary of some of the transactional  
 11 information between someone identified as Joseph Valerio  
 12 and someone identified as Olena Kalichenko?  
 13 A Yes.  
 14 MR. KABRAWALA: We move to admit the summary  
 15 chart.  
 16 THE COURT: Any objection?  
 17 MR. LAPINTA: No. No objection.  
 18 THE COURT: What is the number on the chart?  
 19 MR. KABRAWALA: 322.  
 20 THE COURT: Government's Exhibit 322 is admitted  
 21 as a summary chart.  
 22 (Whereupon, Government Exhibit 322 was received  
 23 in evidence.)  
 24 MR. KABRAWALA: One moment, your Honor.  
 25 BY MR. KABRAWALA:

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1 Q Showing you what has been marked as Government's  
2 Exhibit 10-A -- let me just walk it over to the defense  
3 table first.  
4 Showing you what has been marked as Government's  
5 Exhibit 10-A.  
6 Do you recognize that document?  
7 A Yes.  
8 Q And generally speaking, is that some information that  
9 is contained within Western Union's databases regarding  
10 transactions between someone who is identified as Joseph  
11 Valerio and someone who is identified as Olena Kalichenko?  
12 A The only name that appears on this sheet is the  
13 sender name: Joseph Valerio.  
14 Q Okay. Did you prepare that summary?  
15 A Yes.  
16 MR. KABRAWALA: I move to admit.  
17 MR. LATO: No objection, consistent with your  
18 Honor's limiting instruction.  
19 THE COURT: Yes, they apply to these charts as  
20 well because they are based on Government 10.  
21 So 10-A and 11 are admitted.  
22 (Whereupon, Government Exhibits 10-A and 11 were  
23 received in evidence.)  
24 BY MR. KABRAWALA:  
25 Q I will first publish Government's Exhibit 322.

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1 The information on Western Union's system  
2 concerning the individual to whom this subpoena --  
3 withdrawn.  
4 I want you to look at the subpoena's sender's  
5 name. What does that mean to you based on your knowledge  
6 of Western Union's records?  
7 A It means this is the person who purchased the money  
8 transfer transaction.  
9 Q And the address that is listed at 3 High Gate Drive?  
10 A That would have been the street address, city, state,  
11 he provided at the time of purchase.  
12 Q The city and state that someone provided at the time  
13 of purchase?  
14 A Yes.  
15 Q And "payee name," what does that mean?  
16 A Who the sender identified as the recipient of the  
17 funds.  
18 Q That is this individual Olena Kalichenko?  
19 A Yes.  
20 Q And "paying agent city"?  
21 A The city that the agent paid in -- that paid out the  
22 money transfer.  
23 Q Is it fair to say that is physically where someone at  
24 Western Union or an affiliate of Western Union paid out  
25 cash money to the recipient?

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1 A Yes.  
2 Q And "recording agent country"?  
3 A The country of the paying agent.  
4 I'm sorry, it is record agent, yes. That would  
5 be the country location of the payee agent.  
6 Q And then the "send description," that is money paid?  
7 A The currency, yes.  
8 Q What does that total say there?  
9 A 12,350.  
10 Q I will very quickly show you 10-A. The S-E-M-A-I-L,  
11 what does that mean?  
12 A Sender's e-mail address.  
13 Q Why would a sender have to provide their e-mail  
14 address?  
15 A For online transaction, the confirmation number is  
16 sent back to the customer via e-mail.  
17 Q So the customer would presumably check their e-mail,  
18 the MTCN number?  
19 A Would you say that again?  
20 Q If -- presumably if Western Union sends the  
21 confirmation number to a customer -- withdrawn.  
22 Western Union sends a customer that provided an  
23 e-mail address their MTCN number?  
24 A Yes.  
25 Q That's a unique confirmation number?

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1 A Yes.  
2 Q Used to pick up the money, right?  
3 A Yes.  
4 MR. KABRAWALA: There's nothing further from the  
5 Government.  
6 THE COURT: Any cross-examination?  
7 CROSS-EXAMINATION  
8 BY MR. LAPINTA:  
9 Q Good afternoon, Ms. Johnson.  
10 A Good afternoon.  
11 Q My name is Anthony LaPinta. I'll ask you a series of  
12 questions.  
13 Did you fly here from Nebraska?  
14 A Yes.  
15 Q Welcome to New York.  
16 A Thank you.  
17 Q Let me ask you a couple questions about the opening  
18 or the development of a Western Union account, if I may.  
19 You said there are two ways to develop an  
20 account, is that correct, the first being in person, and  
21 the second one being on the internet via your web page.  
22 Correct?  
23 A Those are two methods to send a money transfer, yes.  
24 Q My question is regarding the opening of an account.  
25 Is there an account here involved in these

Johnson - Cross/LaPinta

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1 transactions that was previously opened or are they  
 2 individual transfers that are made independent of each  
 3 other?  
 4 **A They are individual transfers.**  
 5 **Q** Okay. So if I understand you correctly, as it exists  
 6 in your database, there was never an account opened in the  
 7 name of Joseph Valerio; is that right?  
 8 **A As it is commonly defined as an account, no.**  
 9 **Q** So there are a number of transactions that reference  
 10 the name Joseph Valerio, correct?  
 11 **A Yes.**  
 12 **Q** All right. And I believe you said on direct that  
 13 each and every one of those transfers was done on the  
 14 computer, correct?  
 15 **A All but two were done on the computer.**  
 16 **Q** Two out of the 46, right?  
 17 **A Yes.**  
 18 **Q** Now, let's talk about the 44 that were done on the  
 19 computer.  
 20 **A I'm sorry, there are a total of 48 transfers.**  
 21 **Q** 48 or 46?  
 22 **A A total of 48. Two were done in person; 46 were done**  
 23 **online.**  
 24 **Q** Let's talk about the 46 done on the computer, okay?  
 25 To access this web page, someone just needs to

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1 go on to your home page; is that right?  
 2 **A Yes.**  
 3 **Q** And from your home page they can navigate through a  
 4 number of prompts to do this, correct?  
 5 **A Yes.**  
 6 **Q** And the prompts involved in your web page have areas  
 7 to put in the name?  
 8 **A Yes.**  
 9 **Q** Address, right?  
 10 **A Yes.**  
 11 **Q** And amount to be transferred, right?  
 12 **A Yes.**  
 13 **Q** And recipient, correct?  
 14 **A Yes.**  
 15 **Q** And each time the transfer is made, that information  
 16 is entered, correct?  
 17 **A Yes.**  
 18 **Q** Now, you are referring to data that was entered via  
 19 your web page, correct, on the 46 transactions?  
 20 **A Yes.**  
 21 **Q** You don't know who the person was that actually  
 22 entered that information. You only know the name that was  
 23 used in the transaction, correct?  
 24 **A Yes.**  
 25 **Q** And by the way your computer is configured, your web

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1 page is configured, there is no verification that the  
 2 person entering that information is in fact the name of  
 3 the person listed on the transfer, correct?  
 4 **A Correct.**  
 5 **Q** So conceivably if I were to access your web page  
 6 after court today, I could put in the name Marilyn Monroe,  
 7 but I would be the one that is forwarding the money,  
 8 correct?  
 9 **A Correct.**  
 10 **Q** So as you sit here today, you cannot in any way  
 11 identify Mr. Valerio as being the individual that actually  
 12 sent that money, correct?  
 13 **A Only through the validation process that the company**  
 14 **uses to validate credit card information.**  
 15 **Q** You don't have any banking information with you?  
 16 **A No, sir.**  
 17 **Q** You didn't bring any type of credit card information  
 18 regarding what was used in this account, correct?  
 19 **A No.**  
 20 **Q** You didn't furnish that as a product of the subpoena,  
 21 correct?  
 22 **A No.**  
 23 **Q** You don't have any personal involvement in these  
 24 transactions in terms of your involvement and when they  
 25 were made, right?

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1 **A Correct.**  
 2 **Q** And you are relying only on the data that is on your  
 3 database, correct?  
 4 **A Correct.**  
 5 **Q** Now, your prompts or data entry areas on your web  
 6 page doesn't include any type of reference as to the  
 7 purpose of the transfer, correct?  
 8 **A No.**  
 9 **Q** It doesn't have a subject area or an RE, colon, to  
 10 put in why the transfers are being made, correct?  
 11 **A Correct.**  
 12 **Q** So it could be for any reason, correct?  
 13 **A Yes.**  
 14 **Q** And it could be for the reason of sending money to  
 15 someone to buy furniture, for example?  
 16 **A Yes.**  
 17 **Q** Or to buy food?  
 18 **A Yes.**  
 19 **Q** Or to buy a car, right?  
 20 **A Yes.**  
 21 **Q** Or anything else, right?  
 22 **A Yes.**  
 23 **Q** You don't ask why the money is being transferred.  
 24 All you are looking for is information and a way of  
 25 getting paid, right?

Johnson - Redirect/Kabrawala

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- 1 **A Yes.**  
 2 **Q** So the information on this -- these spreadsheets in  
 3 your CD there, you can't say what these amounts were used  
 4 for or the purpose of these transfers, right?  
 5 **A No, I cannot.**  
 6 MR. LAPINTA: Thank you.  
 7 THE COURT: Any redirect?  
 8 MR. KABRAWALA: Very quickly, Judge.  
 9 REDIRECT EXAMINATION  
 10 BY MR. KABRAWALA:  
 11 **Q** You testified that there was a total of approximately  
 12 12,000 some-odd dollars associated with the e-mail address  
 13 joeval5@optonline.net that were sent out. Is that fair to  
 14 say?  
 15 **A Yes.**  
 16 **Q** And those outgoing wire transfers from the person who  
 17 called themselves Joseph Valerio, those moneys were  
 18 received by a person who called themselves Olena  
 19 Kalichenko?  
 20 **A Yes.**  
 21 **Q** Money was paid out each time; isn't that correct?  
 22 **A Yes.**  
 23 **Q** And money was sent out each time, right?  
 24 **A Yes.**  
 25 **Q** Western Union is in the for-profit business. It

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- 1 didn't give people money?  
 2 **A Correct.**  
 3 **Q** Someone has to send money and someone has to receive  
 4 the money, right?  
 5 **A Yes.**  
 6 **Q** And in this case that was done?  
 7 **A Yes.**  
 8 **Q** And an e-mail was sent to joeval5@optonline.net each  
 9 single time there was a transaction made by that e-mail  
 10 address as the sender, correct?  
 11 **A Yes.**  
 12 MR. KABRAWALA: Nothing further.  
 13 THE COURT: Anything further, Mr. LaPinta?  
 14 MR. LAPINTA: Nothing.  
 15 THE COURT: You may step down, ma'am.  
 16 MR. KABRAWALA: We have a very quick witness.  
 17 We understand from the defendant that they  
 18 should be very quick as well.  
 19 THE COURT: Sir, if you can come up to the  
 20 witness stand and remain standing while the oath is being  
 21 administered here.  
 22 **DEEP CHOPRA,**  
 23 called as a witness, having been first  
 24 duly sworn, was examined and testified  
 25 as follows:

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- 1 THE WITNESS: Deep, D-E-E-P, Chopra,  
 2 C-H-O-P-R-A.  
 3 DIRECT EXAMINATION  
 4 BY MR. KABRAWALA:  
 5 **Q** Good afternoon.  
 6 **A Good afternoon.**  
 7 **Q** I see that you have a uniform on.  
 8 Who do you work for?  
 9 **A I work for U.S. Customs and Border Protection at the**  
 10 **US field office.**  
 11 **Q** Is that commonly referred to as CBP?  
 12 **A Yes.**  
 13 **Q** Homeland Security?  
 14 **A Yes.**  
 15 **Q** What is your job title?  
 16 **A I'm a CBP officer, program manager, at the New York**  
 17 **field office.**  
 18 **Q** In your official capacity -- does CBP maintain  
 19 databases that record the travel history of all persons,  
 20 regardless whether they are a citizen or not, entering and  
 21 leaving the United States?  
 22 **A Yes, it does.**  
 23 **Q** Is a record of a travel -- withdrawn.  
 24 Is a record of a person's travel into and out of  
 25 the United States made even if a person enters through an

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- 1 airport, by car, land, water crossings or a seaport?  
 2 **A Yes.**  
 3 **Q** Is the information that is captured when a person  
 4 either enters or leaves the country, is that entered into  
 5 CBP databases at the same time or around the same time  
 6 that that occurs?  
 7 **A Yes, it is exactly entered at the same time.**  
 8 **Q** And is that information maintained in the regular  
 9 course of CBP's governmental business?  
 10 **A Yes, it is.**  
 11 **Q** Walking over to you what has been marked as  
 12 Government's Exhibits 11 through 20.  
 13 Have you seen those records before?  
 14 **A (Perusing) Yes, I have.**  
 15 **Q** And are those records that are, as you just  
 16 testified -- withdrawn.  
 17 Are those records created simultaneously with  
 18 the information that is put in them?  
 19 **A Yes, they are created at the time of the event.**  
 20 **Q** And are they maintained in the regular course of  
 21 business?  
 22 **A Yes, they are.**  
 23 MR. KABRAWALA: We move to admit 11 through 20.  
 24 MR. LATO: May I just see them quickly?  
 25 MR. KABRAWALA: I'm sorry.

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1 MR. LATO: No objection.  
 2 THE COURT: Government's Exhibits 11 through 20  
 3 are admitted.  
 4 (Whereupon, Government Exhibits 11 through 20  
 5 were received in evidence.)  
 6 Q You've seen these before, right?  
 7 A Yes.  
 8 Q Based on your review of them, is it fair to say --  
 9 you know what? Let me step back.  
 10 Who did these records concern?  
 11 Just describe what the records are generally.  
 12 A I will read directly from the record.  
 13 Q You don't necessarily need to go through each one.  
 14 To save time, give us a general description what  
 15 the records are.  
 16 A These are crossings records in and out of the United  
 17 States for Kalichenko, last name, first name Olena. Date  
 18 of birth, October 4, 1986.  
 19 Q And based on your review of those records, was Olena  
 20 Kalichenko in the United States at any point from  
 21 approximately October 2011 to July 19, 2014? October 2011  
 22 to July 19, 2014?  
 23 A I see an arrival date for her on September 2, 2011,  
 24 into the United States.  
 25 Q When was the next time she came to the United States

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1 after that?  
 2 A I don't see an entry until all the way July 11, 2014.  
 3 Q July 11, 2014?  
 4 A That's correct.  
 5 Q Between those two dates, she couldn't have lawfully  
 6 been present in the United States without CBP being aware  
 7 of it?  
 8 A I would not be able to comment if she was lawfully  
 9 present or not. She would not lawfully have entered the  
 10 US those two dates without CBP reviewing them.  
 11 Q Thank you for clarifying that.  
 12 I want to take back from you Government's  
 13 Exhibit 20. I'll put it back on the screen so you can see  
 14 it, and I'll publish it for the jury.  
 15 Please describe this record. Walk us through  
 16 it. Walk us through.  
 17 A This is an admission record for Ms. Kalichenko.  
 18 Q What does that mean, "admission record"?  
 19 A It's an entry showing the treasury enforcement  
 20 communication system, also known as TECS, indicated on the  
 21 record itself.  
 22 Q What does this record show?  
 23 A The arrival date, time, flight, and the person's  
 24 biographic information.  
 25 Q With respect to the biographic information, the name,

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1 date of birth, citizenship, how is that information  
 2 captured?  
 3 A That information is captured at the time of the  
 4 event, when the subject arrives to board the flight. And  
 5 the airline industry, pursuant to law, is required to take  
 6 that information into the system, which is the APIS,  
 7 advanced passenger information system, which transmits the  
 8 information directly to the Government TECS system.  
 9 If the airline industry fails to submit this on  
 10 a regular, timely basis, they are subject to fines.  
 11 Q Are any governmental officials of the United States  
 12 government ever shown identification information such as a  
 13 passport when the person comes into the country?  
 14 A At the time of entry, the subject is required to  
 15 present a valid identity document.  
 16 Q What if they don't have a valid identity document, if  
 17 they just show up at the airport?  
 18 A They will refuse entry or they will be processed.  
 19 Q Skipping down to arrival information: Airline, US  
 20 Aeroflot.  
 21 Is that the airline she came in?  
 22 A Yes, that is the airline she used to arrive in the  
 23 US.  
 24 Q She arrived on September 22, 2011?  
 25 A Yes, that is correct.

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1 Q I see it says "US address street," and it provides a  
 2 street address, a city and state.  
 3 Who provides that information?  
 4 A The passenger is supposed to disclose their  
 5 information on the I-94 form.  
 6 Q I-94?  
 7 A That's correct, which is also known as the  
 8 arrival-departure form, and that information is  
 9 transmitted into the system from the I-94 form that the  
 10 subject has filled out themselves.  
 11 Q What if they don't fill out that information  
 12 correctly?  
 13 A They will not be allowed to enter the USA. It is a  
 14 requirement for them to fill out the IS-94 form completely  
 15 and correctly.  
 16 Q Read the street address listed in Government's  
 17 Exhibit 20.  
 18 A Street address linked here is 3 High Gate Drive;  
 19 city, Smithtown; state, New York.  
 20 Q When does it say she departed?  
 21 A As listed in this record, indicates the date is  
 22 October 26, 2011.  
 23 Q Is it fair to say that you testified earlier the next  
 24 time she came back into the United States, according to  
 25 CBP records, is sometimes in July of 2014?



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1 **A One moment.**  
2 **That is correct. I have July 11, 2014.**  
3 MR. KABRAWALA: Nothing further on direct.  
4 THE COURT: Cross?  
5 MR. LATO: Yes, your Honor.  
6 May I have the exhibits?  
7 May I have one moment to confer with counsel,  
8 your Honor?  
9 THE COURT: Yes.  
10 MR. LATO: Your Honor, I know you wanted to  
11 break at 4:30. I need about four minutes to look at this,  
12 and then I'll proceed.  
13 THE COURT: Four minutes. Okay.  
14 MR. LATO: Thank you.  
15 Permission to approach?  
16 THE COURT: Yes.  
17 CROSS-EXAMINATION  
18 BY MR. LATO:  
19 **Q Good afternoon, sir.**  
20 **A Good afternoon.**  
21 **Q I'm showing you Government's Exhibits 16 and 17 in**  
22 **evidence.**  
23 Looking at those two together, does that show  
24 that a person who identified herself as Olena Kalichenko  
25 entered the United States on one date and departed the

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1 United States on a later date?  
2 **A Yes, it does.**  
3 **Q** Would it be fair to say that one of those two  
4 exhibits -- and please tell us which one -- that on  
5 February 23, 2010, Olena Kalichenko traveled from Charles  
6 de Gaulle Airport in France to CVG, which is the short  
7 name of the Cincinnati/Northern Kentucky International  
8 Airport?  
9 **A I agree with the first part, but the second part,**  
10 **CVG, I'm not aware if CVG is the airport called for**  
11 **Cincinnati, Ohio, or Cincinnati --**  
12 MR. KABRAWALA: Judge, we'll stipulate that it  
13 is Cincinnati.  
14 THE COURT: Okay.  
15 **Q** Now, on March 14th, it appears that the same person  
16 departed from John F. Kennedy International Airport to  
17 KBP, for an airport in Ukraine?  
18 **A Once again I agree with the departure point from**  
19 **Kennedy, but KBP, I don't have any idea it is from**  
20 **Ukraine.**  
21 **Q** Fair to say that the person left the United States on  
22 March 14, 2010?  
23 **A Yes, that is correct.**  
24 **Q** Do your records indicate where the person went when  
25 that person was in the United States?

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1 **A We do not keep a record of internal travel for the**  
2 **CBP. Only when they travel in and out of the United**  
3 **States.**  
4 **Q** Showing you Government's Exhibit 15.  
5 Would it be fair to say that record indicates  
6 that on June 4, 2011, the person who identified herself as  
7 Olena Kalichenko moved from Frankfurt Airport in Germany  
8 to DFW, Dallas-Fort Worth?  
9 **A Yes.**  
10 **Q** Do you have any information when that person left the  
11 United States based upon records of Homeland Security?  
12 **A I would have to see the records to find the next**  
13 **departure date.**  
14 **Q** I will show you all of the exhibits in evidence.  
15 MR. BODE: May we just have the numbers?  
16 THE COURT: 11 through 20.  
17 MR. BODE: I want to make sure we have all of  
18 them up there.  
19 MR. LATO: All that the Government has  
20 introduced I have given to the witness, so that would be  
21 11 through 20.  
22 **A The next departure date after the arrival into the US**  
23 **is as exhibited in number 19, indicating July 7, 2011,**  
24 **departure out of John F. Kennedy, arriving in SVO on the**  
25 **SU 316 flight.**

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1 **Q** Is that July 7th or July 11th? I'm sorry.  
2 **A I see July 7, 2011.**  
3 MR. LATO: May I have this back?  
4 THE COURT: Sure.  
5 MR. LATO: I'm almost done, your Honor.  
6 **Q** I will show you Government's Exhibits 14 and 20.  
7 With respect to Exhibit 14, does it show that  
8 Olena Kalichenko left or arrived the United States?  
9 **A That is an inbound record, indicating arrival into**  
10 **the US.**  
11 **Q** And that is from SVO airport, an international  
12 airport --  
13 **A That's correct.**  
14 **Q** -- September 2nd of 2011.  
15 Is that also the same trip from SVO to JFK?  
16 **A Exhibit 14 indicates arrival into the US for**  
17 **August 15, 2011, and Exhibit 20 indicates an arrival into**  
18 **the US on September 2, 2011.**  
19 **Q** So it's fair to say there are two arrival dates in  
20 the United States, correct?  
21 **A Yes, these are two arrival dates into the United**  
22 **States.**  
23 **Q** One on August 15th of 2011, and one 18 days later on  
24 September 2nd of 2011?  
25 **A Yes, that is correct.**

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1 Q Where is the record of her having left the United  
2 States in between those two dates?  
3 Do you have that?  
4 I will show you all of the exhibits.  
5 **A If the record is not in one of the records exhibited,**  
6 **then our system does not have the record.**  
7 MR. LATO: Please take a look and see.  
8 THE WITNESS: (Perusing) That is correct.  
9 There is no departure record between those two dates.  
10 MR. LATO: One moment, please.  
11 No further questions.  
12 THE COURT: Any redirect?  
13 MR. KABRAWALA: Nothing further.  
14 THE COURT: You may step down, Officer.  
15 Ladies and gentlemen, we're 15 minutes late, but  
16 we got this done.  
17 Do not read anything in the newspapers or listen  
18 to anything about this case.  
19 We'll see you at 9:30 tomorrow morning.  
20 Have a good night.  
21 (Whereupon, at this time the jury exits the  
22 courtroom.)  
23 THE COURT: You can be seated.  
24 Tell me who the witnesses are tomorrow. I want  
25 to see who they are and see if there are any issues that

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1 we can anticipate for tomorrow.  
2 MR. KABRAWALA: We have two witnesses that are  
3 expected tomorrow: Special Agent Steven Troyd, who is  
4 seated right here, and the Government is calling the  
5 mother of Jane Doe number two.  
6 THE COURT: Okay. Any issues that defense is  
7 aware of?  
8 I want to try to avoid sidebars if we can. If  
9 there are any objections, either documentary or testimony,  
10 let me know.  
11 Anything that you know of now?  
12 MR. LAPINTA: No, there is nothing now.  
13 And we'll meet with the Government when we end  
14 here and go over other items introduced tomorrow to avoid  
15 unnecessary down time.  
16 THE COURT: I appreciate that.  
17 And you'll go through Exhibit 2, the e-mail  
18 packet?  
19 MR. LAPINTA: Yes.  
20 THE COURT: Let me know if there is any  
21 objections to that.  
22 MR. LAPINTA: Yes.  
23 THE COURT: Let's meet at 9:15 so we can deal  
24 with that.  
25 MR. LAPINTA: One question, only because our

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1 direct examination will include a computer expert that we  
2 have on call, who is a very busy guy, and I believe that  
3 the case is going in quicker than we expected.  
4 THE COURT: Is that true? It is going in  
5 quicker than you expected?  
6 MR. KABRAWALA: Actually, I was expecting to  
7 call Agent Troyd this afternoon.  
8 THE COURT: Right now you have him scheduled to  
9 come in when?  
10 MR. LAPINTA: We have him scheduled to come in  
11 on Monday.  
12 MR. KABRAWALA: I'm sorry?  
13 MR. LAPINTA: Scheduled to come on Monday.  
14 MR. KABRAWALA: He should at least be on alert  
15 on Thursday, because our next big witness is the  
16 Government's forensic expert, Detective Rory, R-O-R-Y,  
17 Forrestal.  
18 THE COURT: And you expect you will get to him  
19 tomorrow?  
20 MR. KABRAWALA: Probably not. On Thursday.  
21 THE COURT: How many witnesses do you have after  
22 that?  
23 MR. KABRAWALA: We have one other witness, who  
24 is a probation officer, where there is a 404(b) issue  
25 raised previously, where there is dominion and control of

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1 the camera in the ceiling; that the defendant was being  
2 supervised on an unrelated matter, and as a result of that  
3 she came to his house, searched it, and found things  
4 hidden all over the basement.  
5 THE COURT: So based upon that, Mr. LaPinta, is  
6 he available to testify Thursday afternoon if needed?  
7 MR. LAPINTA: I'll place a call tonight. I'll  
8 call him when we leave.  
9 I want to understand one point. There has not  
10 been a ruling on that 403(b).  
11 THE COURT: No, there has not.  
12 Have a good night.  
13 (Whereupon, the proceedings were adjourned until  
14 Wednesday, November 5, 2014, at 9:30 a.m.)  
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<p style="text-align: right;"><b>390</b></p> <p style="text-align: center;"><b><u>I-N-D-E-X</u></b></p> <p><b><u>W-I-T-N-E-S-S-E-S</u></b></p> <p>PETER ANGELINI 258</p> <p>DIRECT EXAMINATION 258</p> <p>BY MR. KABRAWALA</p> <p>CROSS-EXAMINATION 275</p> <p>BY MR. LATO</p> <p>REDIRECT EXAMINATION 278</p> <p>BY MR. KABRAWALA</p> <p>RECROSS-EXAMINATION 281</p> <p>BY MR. LATO</p> <p>FURTHER REDIRECT EXAMINATION 282</p> <p>BY MR. KABRAWALA</p> <p>ROBERT EGAN 282</p> <p>DIRECT EXAMINATION 283</p> <p>BY MR. KABRAWALA</p> <p>ROBERT EGAN 315</p> <p>DIRECT EXAMINATION 315</p> <p>BY MR. KABRAWALA</p> <p>CROSS-EXAMINATION 321</p> <p>BY MR. LAPINTA</p> <p>REDIRECT EXAMINATION 336</p> <p>BY MR. KABRAWALA</p> <p>RECROSS-EXAMINATION 337</p> <p>BY MR. LAPINTA</p>	<p style="text-align: right;"><b>392</b></p> <p>Government's Exhibits 200-A and 200-B were 285</p> <p>received in evidence</p> <p>Government's Exhibits 200-A and 200-B were 291</p> <p>received in evidence</p> <p>Government's Exhibits 205-A and 211-A were 306</p> <p>received in evidence</p> <p>Government Exhibit 2-B was received in 341</p> <p>evidence</p> <p>Government Exhibit 2-E was received in 351</p> <p>evidence</p> <p>Government Exhibits 2-D, 5 and 5-A were 351</p> <p>received in evidence</p> <p>Government Exhibit 10 was received in 364</p> <p>evidence</p> <p>Government Exhibit 322 was received in 365</p> <p>evidence</p> <p>Government Exhibits 10-A and 11 were received 366</p> <p>in evidence</p> <p>Government Exhibits 11 through 20 were 378</p> <p>received in evidence</p>
<p style="text-align: right;"><b>391</b></p> <p>PETER ANGELINI 339</p> <p>DIRECT EXAMINATION 339</p> <p>BY MR. KABRAWALA:</p> <p>CHERYL JOHNSON 356</p> <p>DIRECT EXAMINATION 356</p> <p>BY MR. KABRAWALA</p> <p>CROSS-EXAMINATION 369</p> <p>BY MR. LAPINTA</p> <p>REDIRECT EXAMINATION 374</p> <p>BY MR. KABRAWALA</p> <p>DEEPCHOPTA 375</p> <p>DIRECT EXAMINATION 376</p> <p>BY MR. KABRAWALA</p> <p>CROSS-EXAMINATION 382</p> <p>BY MR. LATO:</p> <p style="text-align: center;"><b><u>E-X-H-I-B-I-T-S</u></b></p> <p>Government's Exhibits 1-A and 1-B were 272</p> <p>received in evidence</p> <p>Government's Exhibit 4 was received in 263</p> <p>evidence</p> <p>Government's Exhibit 1 was received in 271</p> <p>evidence</p>	

<b>\$</b>	<b>15</b> [5] - 242:8; 256:15; 384:4; 385:17; 386:15	288:5; 291:10, 12; 292:22; 302:3; 304:13; 306:16; 392:1, 3	<b>281</b> [1] - 390:10
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, : 14 CR 0094  
v. : U.S. Courthouse  
JOSEPH VALERIO, : Central Islip, N.Y.  
 :  
Defendant. : TRANSCRIPT OF TRIAL  
 :  
 : November 5, 2014  
-----X 9:45 a.m.

BEFORE:

HONORABLE JOSEPH F. BIANCO, U.S.D.J.  
and a jury

APPEARANCES:

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Proceedings recorded by mechanical stenography.  
Transcript produced by computer-assisted transcription.

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1 MORNING SESSION

2

3 (Case called.)

4 (Appearances noted.)

5 THE COURT: The jurors are all here.

6 I just wanted to see if there are any issues you  
7 wish to address before the jury comes out.

8 The first thing I want to mention with respect  
9 to the jury instructions, we started to work on that. And  
10 I will ask the government if you can email my clerk a copy  
11 of your proposed instructions, and I will ask the defense  
12 to do the same.

13 MR. KABRAWALA: We will take care of that, sure.

14 THE COURT: And the defense, are you submitting  
15 special instructions or awaiting to see the Court's?

16 MR. LATO: Probably the latter, your Honor.

17 THE COURT: If you have any, try to have it in  
18 by tomorrow.

19 MR. LATO: Understood, yes.

20 THE COURT: I wanted to address  
21 Government's Exhibit 2. Has the defense had a chance to  
22 go through that?

23 MR. LATO: Yes.

24 THE COURT: Are there other objections to other  
25 emails in that packet?

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1 MR. LaPINTA: No.

2 THE COURT: Okay.

3 The government then can offer Exhibit 2 when the  
4 jury comes out.

5 I just wanted to make sure that I understand,  
6 other than the ones in Government's Exhibit 2, are there  
7 any emails that the government is offering that are on  
8 that Cablevision disk? Or is the government --

9 MR. KABRAWALA: Your Honor, there are scores of  
10 emails on the Cablevision return that are not on  
11 Government's Exhibit 2.

12 THE COURT: I know. But I wanted to have a  
13 clear understanding as to which -- which documents on the  
14 Cablevision disk of Government's Exhibit 200 are being  
15 admitted in evidence.

16 So other than the ones that are reflected in  
17 Government's Exhibit 2, are there any other emails on  
18 Government's Exhibit 200 that the government wants the  
19 jury to have available to them? That is my question.  
20 Because there are many irrelevant emails on  
21 Government's Exhibit 200; is that right?

22 MR. KABRAWALA: Just to make sure I understand  
23 the question, are there more subsets of  
24 Government's Exhibit 2 that the government is going to --  
25 Government's Exhibit 2 is a packet of emails that Angelini

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1 received from Kalichenko.

2 THE COURT: Right.

3 Those are coming into evidence and obviously the  
4 correspondence of emails on Government's Exhibit 200 are  
5 also coming in evidence.

6 But my question is: Are there any other emails  
7 on Government's Exhibit 200 that the government feels are  
8 relevant to the case and should be presented to the jury  
9 other than the ones that are Government's Exhibit 2?

10 MR. KABRAWALA: Yes, your Honor.

11 There are scores of emails. We have given the  
12 defense over a week ago, they are all marked. They all  
13 come from the Cablevision return. We will probably go  
14 through about 30 or 40 today. The defense were given  
15 another set of the same copies pre-marked that we gave  
16 them last night, copies of what they had last week.

17 THE COURT: You have another subset of  
18 Government's Exhibit 200 that you will present to the  
19 jury?

20 MR. KABRAWALA: Yes, Judge.

21 We will walk them through one by one.

22 THE COURT: You say about 30 of them?

23 MR. KABRAWALA: I would say approximately 30 or  
24 40 that we will go through today.

25 THE COURT: And some are in

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1 Government's Exhibit 2 as well and some are not?

2 MR. KABRAWALA: They are all in

3 Government's Exhibit 2 --

4 MR. BODE: 200.

5 MR. KABRAWALA: No.

6 They are all in Government's Exhibit 2 because  
7 Government's Exhibit 2 is really a subset of  
8 Government's Exhibit 200.

9 MR. BODE: No.

10 MR. KABRAWALA: In some ways.

11 Judge, so I can clarify, the exhibits we are  
12 going to be talking about today, they are only from  
13 Government's Exhibit 200. We literally pulled them off  
14 the Cablevision return, and we will be walking them  
15 through the witness today.

16 MR. LaPINTA: Is that the list of what you gave  
17 me yesterday?

18 MR. KABRAWALA: Yes.

19 MR. LaPINTA: Do you have the numbers of each  
20 one?

21 MR. KABRAWALA: Yes.

22 They are all separately marked so we can  
23 identify them all.

24 THE COURT: Okay.

25 MR. KABRAWALA: What we did is, say there is an

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1 email from July 7, 2012 that was on the Cablevision  
2 return, we pulled the entire email off, marked it  
3 separately, and we will mark it and call it a separate  
4 exhibit. And I will make sure from the agent to make it  
5 clear that it was actually pulled out of the Cablevision  
6 return.

7 THE COURT: All right.

8 Anything you wish to address, Mr. LaPinta,  
9 before the jury comes out?

10 MR. LaPINTA: Not at this time.

11 THE COURT: Government?

12 MR. KABRAWALA: No, Judge.

13 THE COURT: All right.

14 You will offer Government's Exhibit 2 when they  
15 come out?

16 MR. KABRAWALA: Yes.

17 THE COURT: And then we will deal with  
18 Government's Exhibit 200.

19 MR. KABRAWALA: We will go through them one by  
20 one. I will ask the witness whether this is an email that  
21 was pulled from Cablevision's disk.

22 THE COURT: You don't have to do it one by one.

23 You can introduce it as a group, and if you need to, you  
24 can go through it one by one. And that would save time.

25 MR. KABRAWALA: With the Court's permission,

399

1 just to make it easier, is it possible to leave the entire  
2 binder of the exhibits on the stand? And I will  
3 eventually go through them on the computer.

4 THE COURT: Fine.

5 MR. KABRAWALA: All right.

6 (Whereupon, the jury at this time entered the  
7 courtroom.)

8 THE COURT: Will everyone be seated.

9 Good morning, members of the jury.

10 ALL JURORS: Good morning.

11 THE COURT: Nice to see you this morning. I  
12 hope you had a good night.

13 We are ready to proceed with the trial, and I  
14 will ask the government to proceed.

15 MR. KABRAWALA: Before we get started, Judge,  
16 the government moves to admit Exhibit 2 in evidence.

17 THE COURT: Any objection to  
18 Government's Exhibit 2?

19 MR. LATO: No, your Honor.

20 THE COURT: All right.

21 Government's Exhibit 2 is admitted.

22 (Whereupon, Government's Exhibit 2 was received  
23 in evidence.)

24 THE COURT: So the jury understands, portions of  
25 Government's Exhibit 2 were already admitted separately as

400

1 2-B, 2-D, 2-E; is that right?

2 MR. KABRAWALA: That's correct, Judge.

3 THE COURT: And now we are admitting

4 Government's Exhibit 2 in its entirety.

5 Go ahead.

6 MR. KABRAWALA: Thank you.

7 The United States calls Special Agent Steven  
8 Troyd.

9 THE CLERK: Please raise your right hand.

10  
11 STEVEN TROYD,

12 called as a witness, having been first

13 duly sworn, was examined and testified

14 as follows:

15 THE CLERK: Please state and spell your name for  
16 the record.

17 THE WITNESS: My name is Steven Troyd, first  
18 name is S-T-E-V-E-N, last name is spelled T-R-O-Y-D.

19 THE COURT: Please move closer to the  
20 microphone.

21 THE WITNESS: Yes, sir.

22

23

24

25

Troyd-Direct/Kabrawala

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1 DIRECT EXAMINATION

2 BY MR. KABRAWALA:

3 Q Good morning.

4 A **Good morning.**

5 Q Where are you employed?

6 A **I'm employed with the Federal Bureau of  
7 Investigation.**

8 Q The FBI?

9 A **Yes.**

10 Q What is your job title?

11 A **I'm a Special Agent.**

12 Q How long have you been a Special Agent with the FBI?

13 A **Approximately 20 years.**

14 Q Are you currently assigned to any particular group or  
15 squad or task force?

16 A **Yes.**

17 **I'm assigned to Squad C41.**

18 Q Where is that based?

19 A **Based in Melville, Long Island.**

20 Q Are you assigned to any particular task forces?

21 A **Yes.**

22 **C41 consists of the Long Island Child  
23 Exploitation Task Force, the Long Island Gang Force, and  
24 the Violent Crimes Major Offender's Program.**

25 Q And can you please briefly describe what kind of

Troyd-Direct/Kabrawala

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1 crimes the Long Island Child Exploitation Task Force  
 2 investigates?  
 3 **A The Long Island Child Exploitation Task Force**  
 4 **investigates crimes involving child pornography and child**  
 5 **prostitution.**  
 6 **Q** And were you assigned to this task force in January  
 7 of this year, 2014?  
 8 **A Yes, I was.**  
 9 **Q** Were you also assigned to the task force starting in  
 10 the fall of last year?  
 11 **A Yes.**  
 12 **Q** Now, I want to change gears and ask you whether you  
 13 participated in an investigation involving an individual  
 14 named Joseph Valerio?  
 15 **A Yes, I have.**  
 16 **Q** And approximately when did you first come -- become  
 17 involved in the investigation of the defendant?  
 18 **A November 8th, 2013.**  
 19 **Q** Without telling us what anyone told you, how did you  
 20 become involved in the investigation of the defendant?  
 21 **A I was contacted by Special Agent Angelini, who was**  
 22 **working in the LEGAT office in Kiev, Ukraine. And he**  
 23 **provided me with copies of emails and a video containing**  
 24 **child pornography that was sent -- actually the emails**  
 25 **were sent by Joseph Valerio and the video was provided by**

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1 **a woman named Olena Kalichenko.**  
 2 **Q** You were here yesterday during  
 3 Special Agent Angelini's testimony, were you not?  
 4 **A Yes, I was.**  
 5 **Q** And you heard there was some testimony about  
 6 searching with respect to Olena Kalichenko's residence or  
 7 cell phone or computers, do you recall that testimony?  
 8 **A Yes, I do.**  
 9 **Q** Now, you were the lead investigator based on Long  
 10 Island with respect to this investigation, were you not?  
 11 **A Yes. I'm the case agent.**  
 12 **Q** You are the case agent?  
 13 **A Yes, sir.**  
 14 **Q** And that means essentially lead investigator?  
 15 **A Yes. The investigation was assigned directly to me.**  
 16 **Q** Did you ever ask in your role as the lead  
 17 investigator or case agent that Special Agent Angelini  
 18 obtain some legal process to search Olena Kalichenko's  
 19 home or places or cell phone or computer?  
 20 **A No, I did not do that.**  
 21 **Q** Is there a reason you did not ask  
 22 Special Agent Angelini to do that?  
 23 MR. LATO: Objection.  
 24 THE COURT: Why don't you approach.  
 25

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1 (Whereupon, at this time the following took  
 2 place at the sidebar.)  
 3 THE COURT: What is the answer going to be?  
 4 MR. KABRAWALA: It is going to be that  
 5 Kalichenko was the subject of an investigation and there  
 6 was an arrest warrant for her, they didn't want to tip her  
 7 off. They opened the door to that yesterday --  
 8 THE COURT: I just wanted to be sure hearsay  
 9 will not come out. I think you opened the door to this.  
 10 MR. LATO: I don't know if it was the state of  
 11 mind.  
 12 MR. BODE: We can lead to it if you don't  
 13 object.  
 14 THE COURT: Do you want to have them lead  
 15 through it?  
 16 MR. LATO: The unimportant stuff leading is  
 17 fine.  
 18 (Whereupon, at this time the following takes  
 19 place in open court.)  
 20 **Q** Now, I will ask you whether as the lead investigator,  
 21 whether you had asked Angelini to conduct any searches on  
 22 Olena Kalichenko's home, computer devices. And I believe  
 23 your answer was that you did not; is that correct?  
 24 **A That's correct, I did not.**  
 25

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1 **Q** In your experience -- withdrawn.  
 2 Is there a reason -- is the reason you didn't do  
 3 that is because you didn't want to tip off Olena  
 4 Kalichenko as to your investigation of her?  
 5 **A That's correct.**  
 6 **Q** In fact, Olena Kalichenko was the subject of your  
 7 investigation?  
 8 **A Yes, she is.**  
 9 **Q** In fact, she was indicted in the Eastern District of  
 10 New York?  
 11 **A Yes, she was.**  
 12 **Q** And she was arrested ultimately when she got here; is  
 13 that correct?  
 14 **A Yes, she was arrested.**  
 15 **Q** To your knowledge, did the Ukraine have any sort of  
 16 agreement or extradition agreement whereby a subject of an  
 17 investigation in the United States could be extradited to  
 18 the United States?  
 19 MR. LATO: Objection.  
 20 THE COURT: Sustained.  
 21 **Q** Now, you mentioned Special Agent Angelini provided  
 22 you with materials, emails and video containing child  
 23 pornography; is that correct?  
 24 **A Yes, that's correct.**  
 25 **Q** And based on your review of the emails what, if

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1 anything, did you do then?  
2 **A After reviewing the emails, I subpoenaed the email**  
3 **address from Cablevision.**  
4 **Q** What was the email address?  
5 **A Joeval5@optonline.net.**  
6 **Q** Did you ultimately obtain records from Cablevision  
7 for that email address?  
8 **A Yes, I did.**  
9 **Q** In reviewing the records, did you determine whether  
10 there was a physical address associated with the email  
11 address joeval5@optonline.net?  
12 **A Yes.**  
13 **Q** And what was that address?  
14 **A It was 3 High Gate Drive in Smithtown, New York.**  
15 **Q** And with that information and the information that  
16 you had on hand, what else did you do next?  
17 **A I applied for a search warrant in the Eastern**  
18 **District of New York.**  
19 **Q** And was a search warrant issued?  
20 **A Yes, it was.**  
21 **Q** Why did you ask for a search warrant?  
22 **A Because I needed to conduct further investigation to**  
23 **identify if there was in fact child pornography at that**  
24 **residence.**  
25 **Q** And when was the search warrant issued?

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1 **A The search warrant was issued on January 27th, 2014.**  
2 **Q** So after obtaining the search warrant from this court  
3 in the Eastern District of New York, did there come a time  
4 that you actually executed the search warrant on 3 High  
5 Gate Drive in Smithtown, New York?  
6 **A Yes. The search warrant was executed on**  
7 **January 28th, 2014.**  
8 **Q** January 28th, 2014?  
9 **A Yes, sir.**  
10 **Q** And what day of the week was that?  
11 **A That was a Tuesday.**  
12 **Q** And as to -- what kind of location is 3 High Gate  
13 Drive?  
14 **A 3 High Gate Drive is a two-story residential building**  
15 **in a residential neighborhood in Smithtown, New York.**  
16 **Q** Approximately how many agents or officers were with  
17 you that day during the search warrant?  
18 **A There were 12 of us.**  
19 **Q** 12?  
20 **A Yes.**  
21 **Q** At some point did you approach the residence?  
22 **A Yes. At 6:00 a.m. we approached the residence.**  
23 **Q** I know it was January of this year.  
24 How were you dressed?  
25 **A It was a very cold morning. I was wearing a raid**

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1 **jacket over my warm winter jacket, as were other agents,**  
2 **detectives, who were at the residence.**  
3 **Q** Is it fair to say that the folks with you were  
4 similarly dressed?  
5 **A Yes.**  
6 **Q** You mentioned a raid jacket.  
7 Just for the record, what is that?  
8 **A It is the jacket that has the FBI emblem on it to**  
9 **identify us to the public.**  
10 **Q** Is there a reason you wear an insignia on your  
11 clothes?  
12 **A Yes.**  
13 **To let people know we are the FBI and that it is**  
14 **not something else happening to them when we are**  
15 **conducting arrest warrants or search warrants. It takes**  
16 **some of the anxiety out of a situation.**  
17 **Q** And I want you to turn to the binder in front of you  
18 that the Judge kindly let us place there. And I want you  
19 to turn to the following exhibits, and they should be all  
20 in a row: 300, 300-A, 300-B, 300-C, 300-D.  
21 **A I'm at 300.**  
22 **Q** Just look through them, would you.  
23 (Whereupon, at this time there was a pause in  
24 the proceedings.)  
25 **A Okay.**

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1 **Q** Now, with the exception of 300-A, B, C, D --  
2 withdrawn.  
3 Referring to Government's Exhibit 300, is that a  
4 fair and accurate depiction of the front of the residence  
5 on January 28th, 2014?  
6 **A Yes.**  
7 THE COURT: You said that was 300-A?  
8 MR. KABRAWALA: That was 300, sir.  
9 **Q** Now, with respect to 300-A through D, and that is  
10 300-A, B, C, D, are those fair and accurate depictions of  
11 the structure, the residence, 3 High Gate Drive, and I  
12 understand they are not taken at the same time, but  
13 generally speaking, does it fairly and accurately depict  
14 the outside of 3 High Gate Drive?  
15 **A Yes.**  
16 **Q** Did you take the pictures?  
17 **A Yes, I did.**  
18 MR. KABRAWALA: Judge, I move to admit 300-A, B,  
19 C, D.  
20 MR. LATO: No objection.  
21 THE COURT: 300-A through D are admitted.  
22 (Whereupon, Government's Exhibits 300-A, 300-B,  
23 300-C and 300-D were received in evidence.)  
24 MR. KABRAWALA: Your Honor, may I publish those  
25 exhibits?



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- 1 THE COURT: Yes.
- 2 MR. KABRAWALA: From now on may I continue to
- 3 publish it assuming they are in evidence?
- 4 THE COURT: Yes. Just note for the record you
- 5 are publishing which exhibit. All right?
- 6 MR. KABRAWALA: Yes, sir.
- 7 (Whereupon, at this time there was a pause in
- 8 the proceedings.)
- 9 MR. KABRAWALA: I'm now publishing 300-A.
- 10 Now I will publish 300-B.
- 11 300-C.
- 12 Now, 300-D.
- 13 (Whereupon, the exhibit/exhibits were published
- 14 to the jury.)
- 15 Q Now, that is the front door of 3 High Gate Drive?
- 16 A Yes, it is.
- 17 Q Tell us what happened when you got to the door.
- 18 A We arrived at the door. I contacted Mr., Valerio
- 19 while another agent knocked on the door, by telephone. I
- 20 advised Mr. Valerio we are the FBI and he should come and
- 21 open the door.
- 22 Q Why did you call him?
- 23 A In a case like this I would call someone to let them
- 24 know who it is that is knocking at their door, to take the
- 25 anxiety and stress out of the situation and the

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- 1 uncertainty.
- 2 Q And you mentioned this was about 6:00 in the morning?
- 3 A Yes.
- 4 Q Did anyone come to the door?
- 5 A Yes.
- 6 Mr. Valerio opened the door.
- 7 Q For the record, do you see the defendant Joseph
- 8 Valerio sitting in the courtroom today?
- 9 A Yes, I do.
- 10 Q Can you just please point him out by identifying an
- 11 article of clothing that he is wearing?
- 12 A Mr. Valerio is sitting to my left side in the gray
- 13 suit with the red tie.
- 14 MR. KABRAWALA: For the record, the witness has
- 15 identified the defendant.
- 16 THE COURT: Yes.
- 17 Q So what happened then after the defendant opened the
- 18 door?
- 19 A When Mr. Valerio opened the door, I told him we were
- 20 the FBI. I explained to him that we were executing a
- 21 search warrant.
- 22 I walked with him to the edge of the hallway,
- 23 and the other members of the team entered the house.
- 24 Q How was the defendant dressed?
- 25 A He was wearing jeans and a T-shirt.

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- 1 Q Now, do you know where other members of your team
- 2 went after he opened the door?
- 3 A Yes.
- 4 The other members of my team conducted a
- 5 protective sweep of the house, looking for other people
- 6 that might be hiding or unaware of our presence.
- 7 Q Is that standard practice?
- 8 A Yes. We usually seize control of the house as part
- 9 of our search warrant.
- 10 Q Was anybody in the house other than the defendant?
- 11 A Yes.
- 12 Q Who was that?
- 13 A Jaramila, J-A-R-A-M-I-L-A, and the last name is
- 14 Berezovska, and I may have some letters at the end of that
- 15 transposed.
- 16 MR. KABRAWALA: We will spell it later.
- 17 MR. LaPINTA: B-E-R-E-Z-O-V-S-K-A.
- 18 MR. KABRAWALA: First name is J-A-R-M-I-L-A.
- 19 Q Does that sound right?
- 20 A Yes.
- 21 Q All right.
- 22 Did there come a time that you had an
- 23 opportunity to speak with the defendant on that date,
- 24 January 28th, 2014?
- 25 A Yes.

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- 1 Q Where did you speak with him?
- 2 A I spoke to him in the dining room of 3 High Gate
- 3 Drive.
- 4 Q So his dining room?
- 5 A Yes.
- 6 Q And could you please turn to
- 7 Government's Exhibit 302.
- 8 (Whereupon, at this time there was a pause in
- 9 the proceedings.)
- 10 Q Do you recognize that picture?
- 11 A Yes, I do.
- 12 Q What is it?
- 13 A A picture of the area we interviewed Mr. Valerio.
- 14 Q The dining room of 3 High Gate Drive?
- 15 A Yes.
- 16 Q A fair and accurate picture of the dining room as you
- 17 visited on January 28th, 2014
- 18 A Yes.
- 19 MR. KABRAWALA: The government moves to admit.
- 20 MR. LaPINTA: No objection.
- 21 THE COURT: Government's Exhibit 302 is
- 22 admitted.
- 23 (Whereupon, Government's Exhibit 302 was
- 24 received in evidence.)
- 25 MR. KABRAWALA: I'm now publishing

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- 1 Government's Exhibit 302.
- 2 (Whereupon, the exhibit/exhibits were published
- 3 to the jury.)
- 4 **Q** I want to talk about the room briefly.
- 5 You said this was a fair and accurate depiction
- 6 of the dining room itself.
- 7 Anybody else in the dining room with you other
- 8 than the defendant?
- 9 **A Yes.**
- 10 **Q** And would you please briefly describe where folks
- 11 were and who they were.
- 12 **A Yes.**
- 13 **I was seated on the far side of the table in**
- 14 **front of the curio cabinet.**
- 15 **Across from me is a chair with the jacket on it**
- 16 **was Detective Rory Forrestal.**
- 17 **Q** Just for the record, in the foreground there appears
- 18 to be two chairs, one on the right of the picture that has
- 19 what appears to be a jacket on it.
- 20 That is where Detective Rory Forrestal was
- 21 sitting?
- 22 **A Yes.**
- 23 **Q** And across from that there appears to be another set
- 24 of two chairs on the right-hand side. And there is a
- 25 jacket on it, that is where you were sitting?

Troyd-Direct/Kabrawala

415

- 1 **A Yes.**
- 2 **Q** And was there anybody else in the room?
- 3 **A Yes.**
- 4 **Q** Who is that?
- 5 **A Special Agent Danielle Messineo, M-E-S-S-I-N-E-O.**
- 6 **She was seated to the left of Rory Forrestal closer to me**
- 7 **here.**
- 8 **Q** In the foreground on the chair in the left is where
- 9 Special Agent Danielle Messineo was seated?
- 10 **A Yes.**
- 11 **Q** Anybody else seated in the dining room?
- 12 **A Not seated, no.**
- 13 **Q** Was there anybody else there?
- 14 **A Yes.**
- 15 **Q** Who else?
- 16 **A Detective Badalucco with the Nassau County Police**
- 17 **Department.**
- 18 **Q** Where do you say Detective Badalucco was?
- 19 **A Standing by the chair out of the room, but closer to**
- 20 **Danielle Messineo here.**
- 21 **Q** And essentially to the left-hand side foreground area
- 22 of the chair?
- 23 **A Yes, correct.**
- 24 **Q** And was the defendant in the room?
- 25 **A Yes, he was.**

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- 1 **Q** Where was he seated or standing?
- 2 **A He was seated at the head of the table, the**
- 3 **right-hand side.**
- 4 **Q** So it appears there is a chair on the right-hand side
- 5 of the table -- that there is a chair on the right-hand
- 6 side of the photograph, and it is what we refer to as the
- 7 head of the table. Is that where the defendant was
- 8 sitting?
- 9 **A That's correct.**
- 10 **Q** Anybody standing behind him?
- 11 **A No.**
- 12 **Q** Anybody entering or leaving the room on a regular
- 13 basis?
- 14 **A No.**
- 15 **Q** Did there come a time you spoke to him?
- 16 **A Yes.**
- 17 **Q** And what if anything did the defendant admit during
- 18 that time?
- 19 **A I spoke to Mr. Valerio, and I explained to him we**
- 20 **were executing a search warrant on his residence, looking**
- 21 **for evidence of child pornography.**
- 22 **Mr. Valerio then advised me that he was actually**
- 23 **being extorted, that he had a relationship with a woman**
- 24 **named Olena Kalichenko, a Ukrainian woman he had met on**
- 25 **line. He had -- the relationship had gone bad and she had**

Troyd-Direct/Kabrawala

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- 1 **contacted him on a chat app called Viber. And she was**
- 2 **telling him that he needed to negotiate or she was going**
- 3 **to expose him to the police.**
- 4 **Q** He claimed he was being extorted?
- 5 **A Yes.**
- 6 **Q** Did he tell you whether he told anyone about this
- 7 purported extortion?
- 8 **A Yes, he did.**
- 9 **Q** Can you briefly describe what the defendant said?
- 10 **A He said that he had gone and spoken to a lawyer named**
- 11 **Anthony LaPinta about this extortion attempt.**
- 12 **Q** Did the defendant ask to speak to attorney Anthony
- 13 LaPinta at that time?
- 14 **A No, he did not.**
- 15 **Q** Did the defendant ask to speak with any lawyer at
- 16 that time?
- 17 **A No, he did not.**
- 18 **Q** During the meeting with the defendant did you show
- 19 him anything?
- 20 **A Yes, I did.**
- 21 **Q** What did you show him?
- 22 **A I showed him an email and read him an excerpt from**
- 23 **it.**
- 24 **Q** I want you to turn to Government's Exhibit 303, it
- 25 should be the very next one.

Troyd-Direct/Kabrawala

418

1 Do you see it?

2 **A Yes.**

3 **Q** Is that a true and correct copy of the email you just

4 referred to in your testimony?

5 **A Yes, it is.**

6 MR. KABRAWALA: The government moves to admit.

7 MR. LATO: No objection.

8 THE COURT: 303 is admitted.

9 (Whereupon, Government's Exhibit 303 was

10 received in evidence.)

11 MR. KABRAWALA: I will publish it.

12 (At this time a document was exhibited on

13 courtroom screen.)

14 **Q** Would you describe what the message information is,

15 the from and the to and also the details.

16 **A Certainly.**

17 **The from portion of the email says Joe Valerio,**

18 **from joeval5@optonline.net, sent Sunday, July 22, 2012, at**

19 **10:28 p.m., to kalichenkoes@mail.ru.**

20 **The subject being forward, reference forward --**

21 **excuse me, forward, return forward. Where's [REDACTED]**

22 **information and the other stuff and [REDACTED]**

23 **Q** You said you read a particular portion of the email.

24 Would you describe which portion you read to the defendant

25 during the interview with him in the dining room?

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1 **A On the second page, the second paragraph.**

2 **Q** Okay.

3 Why don't you read aloud the portion that you

4 read for the defendant on that day.

5 **A I was actually able to see some girls come in their**

6 **panty hose. Speaking of which I want video of you and**

7 **[REDACTED]. Get her to play or eat, just eat your pussy.**

8 **Q** Now, after you read that portion to the defendant,

9 what, if anything, did the defendant say?

10 **A I asked the defendant if he sent this email.**

11 **He said, yes, this was his email.**

12 **He further indicated that he had directed Olena**

13 **Kalichenko to produce child pornography, and that he had**

14 **in fact received that child pornography in the emails.**

15 **Q** Did the defendant say who was depicted in the email

16 that he received?

17 **A Yes.**

18 **Q** Who is that?

19 **A That was Olena Kalichenko and her daughter.**

20 **Q** Did the defendant admit to anything else aside from

21 admitting that he had directed the production of child

22 pornography and received it by email?

23 **A Yes.**

24 **I asked him if he received any disks via DHL.**

25 **He responded he had in fact received a package.**

Troyd-Direct/Kabrawala

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1 **It did not contain a disk. It only contained bubble wrap,**

2 **and he received it from Olena Kalichenko.**

3 **Q** He claimed the package that was sent by DHL -- DHL is

4 a courier like FedEx?

5 **A Yes. Similar to UPS or FedEx.**

6 **Q** All right.

7 He claimed that he received the FedEx -- the DHL

8 from Olena Kalichenko and it only contained bubble wrap?

9 **A That's correct.**

10 **Q** Did there come a time you provided the defendant with

11 what is commonly referred to as the Miranda warnings?

12 **A Yes.**

13 **Q** And I want you to take a look at

14 Government's Exhibit 304.

15 **A Yes.**

16 **Q** Do you recognize that document?

17 **A Yes.**

18 **Q** What is it?

19 **A An advice of rights form commonly referred as FD 395.**

20 **Q** It is a standard form that you carry around with the

21 FBI?

22 **A Yes.**

23 **Q** And it is a form that essentially contains the

24 Miranda warnings, is that fair to say?

25 **A Yes.**

Troyd-Direct/Kabrawala

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1 **Q** Is that a true and correct copy of the Miranda

2 warnings form that you read out to the defendant and

3 provided him in that dining room on January 28th, 2014?

4 **A Yes.**

5 MR. KABRAWALA: Move to admit, Judge.

6 MR. LATO: No objection.

7 THE COURT: 304 is admitted.

8 (Whereupon, Government's Exhibit 304 was

9 received in evidence.)

10 MR. KABRAWALA: I will now publish

11 Government's Exhibit 304.

12 (At this time a document was exhibited on

13 courtroom screen.)

14 **Q** I want you to describe the form, and why don't you go

15 ahead and read the entire form aloud. It is pretty short.

16 **A The entire form is advice of rights. In the upper**

17 **right-hand corner it says place: Smithtown, New York.**

18 **Date, January 28th, 2014.**

19 **Time is blank.**

20 **The subtitle is, your rights.**

21 **Then it goes to say, before we ask you any**

22 **questions, you must understand your rights.**

23 **You have the right to remain silent.**

24 **Anything you say can be used against you in**

25 **court.**

Troyd-Direct/Kabrawala

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1 **You have the right to talk to a lawyer for**  
 2 **advice before we ask you any questions.**  
 3 **You have the right to have a lawyer with you**  
 4 **during questioning.**  
 5 **You -- if you cannot afford a lawyer, one will**  
 6 **be appointed for you before any questioning, if you wish.**  
 7 **If you decide to answer questions now without a**  
 8 **lawyer present, you have the right to stop answering at**  
 9 **any time.**  
 10 **I have read this statement of my rights and I**  
 11 **understand what my rights are. At this time I am willing**  
 12 **to answer questions without a lawyer present.**  
 13 **Below is a line that says, signed.**  
 14 **It is signed by Mr. Valerio.**  
 15 **Witnessed by myself, and witnessed by Rory**  
 16 **Forrestal.**  
 17 **The time of the witnessing is at 7:55 a.m.**  
 18 **Q** After the defendant signed this form and indicated he  
 19 wanted to waive his rights, was he shown anything else?  
 20 **A Yes. I showed him two emails which he then read.**  
 21 **Q** Do you recall the date of the emails that you showed  
 22 the defendant?  
 23 **A Yes, one was July 2nd, 2012 and the other was**  
 24 **July 17th, 2012.**  
 25 **Q** Now, I know you already testified about a July 17th,

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1 2012 email that we actually published as  
 2 Government's Exhibit 303.  
 3 Is that the same email you showed him --  
 4 withdrawn.  
 5 You just testified about an email dated  
 6 July 17th, 2012 that was entered into evidence as  
 7 Government's Exhibit 303.  
 8 Is that the same email you showed the defendant  
 9 after you Mirandized him?  
 10 **A Yes.**  
 11 **Q** And did you show him another email as well, July 22,  
 12 2012 email?  
 13 **A Yes, I did.**  
 14 **Q** And you said you gave the defendant an opportunity to  
 15 read the entire email; is that correct?  
 16 **A That's correct.**  
 17 **Q** And based on your observation of the defendant, did  
 18 he appear to read both of them?  
 19 **A Yes, he did.**  
 20 **Q** I want you to look at Government's Exhibit 303-A.  
 21 **A Yes.**  
 22 **Q** Do you recognize that document?  
 23 **A Yes, I do.**  
 24 **It is an email from Joseph Valerio to Olena**  
 25 **Kalichenko.**

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1 **Q** Is that one of the emails you obtained from  
 2 Special Agent Angelini by way of Kalichenko?  
 3 **A Yes, it is.**  
 4 **Q** And that is how you had it with you that day?  
 5 **A Yes, correct.**  
 6 **Q** And is that Exhibit 303-A a true and correct copy of  
 7 the exact email that you showed the defendant and that he  
 8 read on January 28th, 2014?  
 9 **A Yes, it is.**  
 10 MR. KABRAWALA: The government moves to admit.  
 11 MR. LATO: No objection.  
 12 THE COURT: 303-A, admitted.  
 13 (Whereupon, Government's Exhibit 303-A was  
 14 received in evidence.)  
 15 MR. KABRAWALA: I'm now publishing  
 16 Government's Exhibit 303-A.  
 17 (At this time a document was exhibited on  
 18 courtroom screen.)  
 19 **Q** I will scroll down to the middle where it says -- do  
 20 you see where I'm pointing the cursor?  
 21 **A Yes.**  
 22 **Q** Is it fair to say that that email was sent from Olena  
 23 Kalichenko's email address to Peter Angelini at the FBI?  
 24 **A Yes, it was.**  
 25 **Q** And it was forwarded on or about -- on November 8th,

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1 2013?  
 2 **A Yes.**  
 3 **Q** Now, I want you to look just below that at the  
 4 original message.  
 5 Who is it from?  
 6 **A This message is from Joe Valerio at**  
 7 **joeval5@optonline.net dated July 17th, 2012, to**  
 8 **kalichenkoes@mail.ru.**  
 9 **The subject is forward Anna's passport.**  
 10 **Q** All right.  
 11 This will probably sound familiar because you  
 12 were in the courtroom yesterday.  
 13 I want you to read aloud from Helena to where  
 14 the words pantry, exclamation mark.  
 15 **A Helena, how are you doing?**  
 16 **I'm glad you are safe in Kiev, and I had sent**  
 17 **you a text message earlier today. Did you get that?**  
 18 **I got your videos which were very delicious. I**  
 19 **just didn't see the rooms and bedroom, especially when you**  
 20 **stood in Turkey. Not a problem. I'm trusting that you**  
 21 **were clean in Turkey.**  
 22 **Remember, it is the man that delivers the**  
 23 **disease and the woman harbors and carries and stores the**  
 24 **disease, like food in the pantry.**  
 25 **Q** I will scroll down, and you can follow along with me.

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1 I just want you to read from the beginning of  
2 the next paragraph, starting with, the videos you sent by  
3 cell phone camera are perfect, all the way down to -- stop  
4 when you get to, instruct you to do it.  
5 **A Down to instruct you how to do it?**  
6 **Q** On the next page -- yes, I misspoke.  
7 **A The videos you sent by cell phone camera are perfect**  
8 **and there is no need for the expense of another camera**  
9 **when you have done a terrific job with the cell phone**  
10 **camera. I have a new cell phone which allows me to**  
11 **transfer your video to my email and the screen is bigger**  
12 **to view. Plus, you can have endless video time per**  
13 **session with a cell phone camera. As far as the script,**  
14 **do the same with our little [REDACTED]'s delicious little**  
15 **pussy, you know, in the tub, the way you would eat her so**  
16 **sweet, of course, pantyhose and tights as you two dance,**  
17 **place toys inside your pussy, and have our little [REDACTED]**  
18 **pull them out of your wet pussy, emmmm. Tell me how you**  
19 **love when you eat her little pussy and how wet your pussy**  
20 **was, correct.**  
21 **I told you how I can't wait to make hard love to**  
22 **you as you eat our little [REDACTED] delicious little pussy.**  
23 **I can't wait to try it, too. So no worries about a six to**  
24 **thirteen hundred dollar camera.**  
25 **I will send you some cash Tuesday eve for the**

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1 time that you make videos with [REDACTED], times at the pool  
2 showers and dressing rooms, etcetera. Buy your mom a  
3 special gift and little [REDACTED] a big toy, doll or clothes.  
4 I can't wait to see you as well in Miami. Yes,  
5 absolutely. Our plans are on schedule for the end of July  
6 with the gratitude of your visa.  
7 The day before you do the videos at the pool,  
8 dressing, then with [REDACTED] let me know and I will  
9 instruct you how to do it.  
10 **Q** You testified you gave the defendant an opportunity  
11 to read the emails, and he apparently had read them?  
12 **A Yes, he did.**  
13 **Q** Did the defendant admit sending that email?  
14 **A Sorry, what was that?**  
15 **Q** Did the defendant admit sending that email?  
16 **A Yes, he admitted to sending both the emails.**  
17 **Q** By both the emails, you mean the emails sent on  
18 July 17th, 2012, and the one you just read out loud, the  
19 portions from July 22, 2012?  
20 **A Yes.**  
21 **I just -- the July 17th email.**  
22 **Q** But he admitted --  
23 **A He admitted to having sent both the July 17th and the**  
24 **July 22 emails.**  
25 **Q** Did the defendant say why he wanted the videos?

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1 **A Yes.**  
2 **He stated he had sent Olena Kalichenko thousands**  
3 **of dollars, and that he wanted something in return for all**  
4 **his money.**  
5 **He also stated that he had provided her with**  
6 **cash for an airline ticket which she had kept and never**  
7 **purchased the ticket.**  
8 **Q** And he wanted something in return?  
9 **A He wanted something in return for the money he had**  
10 **given her, the thousands of dollars.**  
11 **Q** After the defendant admitted to sending the email,  
12 did you show him anything else?  
13 **A Yes.**  
14 **Q** What did you show him?  
15 **A I showed him a clip of the video that was sent to me**  
16 **by Special Agent Angelini that he had received from Olena**  
17 **Kalichenko.**  
18 **Q** So Special Agent Angelini sent you a disk with a  
19 video on it?  
20 **A Yes.**  
21 **Q** A fairly lengthy video; is that fair to say?  
22 **A Yes.**  
23 **Q** And I'm not talking about the clip of the video, but  
24 generally speaking -- withdrawn.  
25 Did you view the entire video?

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1 **A Yes, I did.**  
2 **Q** Can you briefly describe what is on the video?  
3 **A There are sexually explicit scenes between Olena**  
4 **Kalichenko and her daughter, where she is touching her**  
5 **daughter's genitals and the daughter touching hers, and**  
6 **there is the use of objects on Ms. Kalichenko that are**  
7 **also touched by the child. There is dancing and oral to**  
8 **vaginal contact between the mother and the child.**  
9 **Q** Did you show the defendant the entire video?  
10 **A No, I did not.**  
11 **Q** Did you show him a clip?  
12 **A I showed him the clip that had very little sexual**  
13 **explicit material in it for identification purposes only.**  
14 **Q** You just showed him a portion so he could identify  
15 who was in the video, but you didn't show him actually any  
16 oral to genital contact at that time?  
17 **A That's correct.**  
18 **Q** Take a look at Government's Exhibit 1-C.  
19 MR. KABRAWALA: May I approach, Judge?  
20 THE COURT: Yes.  
21 (Counsel approaches the witness stand.)  
22 **Q** 1-C.  
23 It is a disk?  
24 **A Yes.**  
25 **Q** What is on the disk?



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1 **A This is the segment that I showed Mr. Valerio.**  
 2 **Q** How do you know that that disk is the portion that  
 3 you showed Mr. Valerio?  
 4 **A Because it is initialed and signed by me -- I mean,**  
 5 **initialed and dated by me.**  
 6 **Q** And did you review the disk before coming to court  
 7 today?  
 8 **A Yes.**  
 9 **Q** And you initialed it with your initials on there?  
 10 **A Yes.**  
 11 **Q** Is that a true and correct copy of the clip portion  
 12 that you showed the defendant on January 28th, 2014?  
 13 **A Yes, it is.**  
 14 MR. KABRAWALA: The government moves to admit  
 15 Exhibit 1-C.  
 16 MR. LATO: No objection.  
 17 THE COURT: 1-C is admitted.  
 18 (Whereupon, Government's Exhibit 1-C was  
 19 received in evidence.)  
 20 **Q** What I will do is play the clip.  
 21 And this is not of a sexual nature?  
 22 **A It is the least sexual nature of the material.**  
 23 **Q** And you played it just for identification?  
 24 **A That's correct.**  
 25 (Video viewed.)

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1 **Q** After you showed the clip to the defendant, what, if  
 2 anything, did he say?  
 3 **A He said he recognized Olena Kalichenko and the child.**  
 4 **But he did not recognize the background and he did not**  
 5 **believe he had seen this clip because that background did**  
 6 **not match the background in other videos he had seen.**  
 7 **Q** He recognized the two people in it?  
 8 **A Yes, he did.**  
 9 **Q** But he claimed not to have seen this particular video  
 10 because he didn't recognize the background?  
 11 **A That's correct. It did not match the background of**  
 12 **previous videos he had viewed that was sent to him by**  
 13 **Olena Kalichenko.**  
 14 **Q** I want to turn your attention to the search itself.  
 15 You testified that you and your team was there  
 16 to execute the search warrant; is that fair to say?  
 17 **A Yes.**  
 18 **Q** And during that time the defendant spoke with you,  
 19 but there was a search going on?  
 20 **A Yes, there was.**  
 21 **Q** I want you to take a look at  
 22 Government's Exhibit 305.  
 23 Do you see it?  
 24 **A Yes.**  
 25 **Q** Do you recognize that picture?

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1 **A Yes.**  
 2 **Q** Generally speaking, what is it a picture of?  
 3 **A This is a picture of the desk area in a second floor**  
 4 **bedroom that was being used as an office.**  
 5 **On the desk is a computer hard drive and screen.**  
 6 **Q** You saw that area; is that fair to say?  
 7 **A Yes.**  
 8 **Q** Does that picture, Government's Exhibit 305, fairly  
 9 and accurately depict the condition of what is depicted in  
 10 it as it existed on January 28th, 2014?  
 11 **A Yes, it does.**  
 12 MR. KABRAWALA: We move to admit, Judge.  
 13 MR. LATO: No objection.  
 14 THE COURT: 305 is admitted.  
 15 (Whereupon, Government's Exhibit 305 was  
 16 received in evidence.)  
 17 MR. KABRAWALA: I'm now publishing  
 18 Government's Exhibit 305.  
 19 (At this time a document was exhibited on  
 20 courtroom screen.)  
 21 **Q** Did you seize any computers from that room? If so,  
 22 point it out and describe it.  
 23 **A Yes. We seized the computer hard drive located to**  
 24 **the right of the computer screen and next to a speaker,**  
 25 **and to the left of the lamp in the corner.**

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1 **Q** When you say computer hard drive, do you mean  
 2 actually computer tower?  
 3 **A Yes, the tower.**  
 4 **Q** I want you to take a look at that.  
 5 (Handed to the witness.)  
 6 MR. KABRAWALA: For the record, that is  
 7 Government's Exhibit 400.  
 8 **Q** Do you recognize Government's Exhibit 400?  
 9 **A Yes, I do.**  
 10 **Q** What is it?  
 11 **A The computer tower seized from the second floor of**  
 12 **3 High Gate Drive on the date of --**  
 13 **Q** Did you seize it?  
 14 **A Yes.**  
 15 MR. KABRAWALA: The government moves to admit  
 16 Government's Exhibit 400, the tower computer in front of  
 17 the witness.  
 18 THE COURT: Any objection?  
 19 MR. LATO: No objection.  
 20 THE COURT: Government's Exhibit 400 is  
 21 admitted.  
 22 (Whereupon, Government's Exhibit 400 was  
 23 received in evidence.)  
 24 **Q** I will move it away from you so it doesn't obstruct  
 25 you.

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1 I'm handing you what is marked as  
 2 Government's Exhibit 405 in a little plastic baggie, and  
 3 Government's Exhibit 402, a cell phone.  
 4 Were those two items seized from the defendant's  
 5 house pursuant to the search warrant on January 28th,  
 6 2014?  
 7 **A Yes, they were.**  
 8 MR. KABRAWALA: The government moves to admit  
 9 Exhibits 405 and 402.  
 10 MR. LATO: No objection.  
 11 THE COURT: They are admitted.  
 12 (Whereupon, Government's Exhibits 402 and 405  
 13 were received in evidence.)  
 14 **Q** Now, was somebody tasked -- that is, was it their  
 15 task -- to forensically analyze the computer you were just  
 16 shown as Government's Exhibit 400, the cell phone and the  
 17 SD memory card that are sitting in front of you?  
 18 **A Yes.**  
 19 **Q** And who was that person?  
 20 **A Detective Rory Forrestal from the Suffolk County**  
 21 **Police Department.**  
 22 **Q** Did there come a time that you were shown images and  
 23 videos that were recovered from the computer,  
 24 Government's Exhibit 400, the hard drive from that  
 25 computer, and images recovered from the SD memory card,

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1 Government's Exhibit 405?  
 2 **A Yes, there were.**  
 3 **(Handed to the witness.)**  
 4 MR. KABRAWALA: The defense has a copy, your  
 5 Honor.  
 6 **Q** Would you take a look at that.  
 7 Now, the government --  
 8 MR. KABRAWALA: The government is not admitting  
 9 these at this time. They are simply for identification.  
 10 And I will read out a number of exhibit numbers.  
 11 Exhibits 508, 509, 510, 511, 515, 516, 518, 519,  
 12 520, 521, 522, 523, 524, 525, 526, 528, 530, 532, 533,  
 13 534, 535, 536, 537, 538 and 539.  
 14 (Whereupon, at this time there was a pause in  
 15 the proceedings.)  
 16 **Q** Now, do you recognize those exhibits, those images?  
 17 **A Yes, I do.**  
 18 **Q** How did you first come to see those images?  
 19 **A I was provided with the pictures by Detective Rory**  
 20 **Forrestal.**  
 21 **Q** Is that after he evaluated the computer items that  
 22 you just discussed?  
 23 **A Yes.**  
 24 **Q** At the time you saw those exhibits that are in front  
 25 of you, did you recognize the face of the child that is

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1 depicted in some of the images?  
 2 **A Yes, I did.**  
 3 **Q** Without saying the child's last name, who did you  
 4 recognize the child to be?  
 5 **A I recognized her as [REDACTED], Mr. Valerio's [REDACTED].**  
 6 **Q** How did you know that the girl depicted in some of  
 7 the images was the defendant's [REDACTED] [REDACTED]  
 8 **A In the course of my investigation I had come across**  
 9 **pictures of her at various locations.**  
 10 **I had also seen her at one point in my**  
 11 **investigation.**  
 12 **Q** Take a look at Government's Exhibit 307.  
 13 **A Yes.**  
 14 **Q** Do you see it?  
 15 **A Yes, I do.**  
 16 **Q** What is it?  
 17 **A This is part of the basement of 3 High Gate Drive**  
 18 **with a couch, a leather type chair, a closet area above**  
 19 **the couch, and some storage space on the wall, some**  
 20 **shelving.**  
 21 **Q** Is that a fair and accurate depiction of the portion  
 22 of the basement depicted as it existed on January 28th,  
 23 2014?  
 24 **A Yes.**  
 25 MR. KABRAWALA: The government moves to admit.

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1 MR. LATO: No objection.  
 2 THE COURT: 307 is admitted.  
 3 (Whereupon, Government's Exhibit 307 was  
 4 received in evidence.)  
 5 MR. KABRAWALA: I'm now publishing  
 6 Government's Exhibit 307.  
 7 (At this time a document was exhibited on  
 8 courtroom screen.)  
 9 **Q** You testified you see a sofa and a recliner type  
 10 chair; is that fair to say?  
 11 **A Yes.**  
 12 **Q** And there is some kind of wooden closet door or crawl  
 13 space type thing up here, and I'm pointing to essentially  
 14 the center of the picture of the Exhibit 307.  
 15 Fair to say?  
 16 **A Yes, above the couch.**  
 17 **Q** Did you recognize those things in the pictures that  
 18 you identified of the defendant's [REDACTED]?  
 19 **A Yes, I did.**  
 20 **Q** Would you please briefly describe what you are  
 21 talking about.  
 22 **A In the pictures of [REDACTED], we observed the couch, the**  
 23 **leather chair, that closet that is partially depicted in**  
 24 **one of the photos. And in particular the design on the**  
 25 **pillow cushions is very distinct.**

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- 1 Q So it is fair to say you recognized some of the items  
2 depicted in the picture that you observed during the  
3 search warrant in some of the pictures of the defendant's  
4 home?  
5 A **That's correct.**  
6 Q And with that information did you -- what, if  
7 anything, did you do?  
8 A **I obtained a search warrant from the Eastern District  
9 of New York.**  
10 Q Before you obtained the search warrant, I want to  
11 draw your attention to February 24th of this year.  
12 A **Yes.**  
13 Q Did there come a time that you arrested the defendant  
14 for a second time?  
15 A **Yes, I did.**  
16 Q And on that date when you arrested the defendant for  
17 a second time, was it in relation to anything in  
18 particular?  
19 A **Yes.**  
20 **It was in relation to the discovery of these  
21 additional photographs from the search warrant on  
22 January 28th.**  
23 Q So this search warrant -- there were images recovered  
24 from the forensic analysis, and you observed those images;  
25 is that fair to say?

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- 1 A **Yes, that's correct.**  
2 Q And that led you to the second arrest, is that fair  
3 to say?  
4 A **That's correct.**  
5 Q Now, at the time that you arrested the defendant for  
6 the second time, as you did for the first time, did you  
7 provide the defendant with the Miranda warnings?  
8 A **Yes, I did.**  
9 Q Take a look at Government's Exhibit 308.  
10 A **Yes.**  
11 Q What is this form?  
12 A **This is the FD 395, the advice of rights form  
13 executed on February 24th, 2014.**  
14 Q Is it a true and correct copy of the FD -- withdrawn.  
15 Is it a true and correct copy of the advice of  
16 rights form that you provided the defendant on  
17 February 24th, 2014?  
18 A **Yes, it is.**  
19 MR. KABRAWALA: Move to admit.  
20 MR. LaPINTA: No objection.  
21 THE COURT: 308 is admitted.  
22 (Whereupon, Government's Exhibit 308 was  
23 received in evidence.)  
24 MR. KABRAWALA: I will publish it now.  
25 (At this time a document was exhibited on

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- 1 courtroom screen.)  
2 Q Is it fair to say it is the standard form, and  
3 exactly the same as the -- other than what is filled in,  
4 it is exactly the same as the other form that you earlier  
5 described?  
6 A **Yes, it is.**  
7 Q There is no need to read it aloud then.  
8 But why don't you tell us and describe for the  
9 record the portions actually filled in.  
10 A **On the top right-hand corner it says place, Melville,  
11 New York.**  
12 **Date, February 24th, 2014.**  
13 **Time, 3:35 p.m.**  
14 **At the bottom right-hand side where it is signed  
15 by Joseph Valerio, it is witnessed by myself on the left  
16 side, and Danielle Messineo.**  
17 Q Now, at some point after Mirandizing the defendant,  
18 providing him the rights in the rights of -- advice of  
19 rights form, did you tell the defendant -- withdrawn.  
20 After advising the defendant of his rights on  
21 that date, the defendant -- did the defendant ask you why  
22 he was being re-arrested?  
23 A **Yes, he did.**  
24 Q Did you tell him?  
25 A **Yes, I did.**

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- 1 Q What did you tell him?  
2 A **I told him that the search warrant on January 28th, I  
3 discovered pictures of his [REDACTED].**  
4 Q What if anything did the defendant say in response to  
5 this?  
6 A **He said, I no longer have a family. I want to kill  
7 myself.**  
8 Q I would like to draw your attention to the very next  
9 day, February 25th, 2014.  
10 You mentioned earlier that you obtained another  
11 search warrant.  
12 Is that the date you obtained the other search  
13 warrant?  
14 A **Yes, it is.**  
15 Q The same search warrant for the same premises, 3 High  
16 Gate Drive, Smithtown, New York?  
17 A **Yes, it is.**  
18 Q And you testified that this court, the Eastern  
19 District of New York, issued the search warrant?  
20 A **Yes.**  
21 Q And --  
22 A **It was issued by Magistrate Judge Gary Brown.**  
23 Q Why did you get another search warrant?  
24 A **Because we had seen items in those photos during the  
25 January 28th search warrant that we did not seize because**

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1 at that time we didn't see their relevance. And we wanted  
2 to go in and acquire those items as evidence at that time.  
3 Q I want to show you -- actually it is in front of you,  
4 but take a look at Government's Exhibit 320.  
5 A Yes.  
6 Q What is that a picture of?  
7 A That is a picture of the love seat that is part of  
8 the couch in the basement of 3 High Gate Drive. On there  
9 are two pillows that have the distinct design that I  
10 observed in one of the photos of his [REDACTED].  
11 Q And the photograph depicted in Exhibit 320, is that a  
12 fair and accurate depiction of the sofa with the pillows  
13 on February 25th, 2014?  
14 A Yes.  
15 MR. KABRAWALA: The government moves to admit.  
16 MR. LATO: No objection.  
17 THE COURT: 320 is admitted.  
18 (Whereupon, Government's Exhibit 320 was  
19 received in evidence.)  
20 MR. KABRAWALA: I'm now publishing  
21 Government's Exhibit 320.  
22 (At this time a document was exhibited on  
23 courtroom screen.)  
24 Q What I will do is come over with  
25 Government's Exhibit 334 and 334-A and 334-B.

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1 (Handed to the witness.)  
2 Q Do you recognize those?  
3 A Yes.  
4 These were the pillows in the basement of 3 High  
5 Gate Drive which were part of that couch.  
6 Q Did you seize those on February 25th, 2014 from the  
7 defendant's residence at 3 High Gate Drive?  
8 A Yes, I did.  
9 MR. KABRAWALA: The government moves to admit.  
10 MR. LATO: No objection.  
11 THE COURT: 334 to 3 -- and 334-A and B are  
12 admitted.  
13 (Whereupon, Government's Exhibits 334, 334-A and  
14 334-B were received in evidence.)  
15 Q Take a look at Government's Exhibit 309, please.  
16 A Yes.  
17 Q Was that picture taken on February 25th, 2014 at the  
18 defendant's residence at 3 High Gate Drive?  
19 A Yes, it was.  
20 Q Is it a fair and accurate depiction of a portion of  
21 that house on that date?  
22 A Yes, it is.  
23 MR. KABRAWALA: The government moves to admit.  
24 MR. LATO: No objection.  
25 THE COURT: 309 is admitted.

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1 MR. KABRAWALA: Publishing.  
2 (Whereupon, Government's Exhibit 309 was  
3 received in evidence.)  
4 (At this time a document was exhibited on  
5 courtroom screen.)  
6 Q What do you see in that picture that is of relevance?  
7 A The blue Spiderman ball.  
8 Q For the record, where is that? What are you looking  
9 at?  
10 A This is a closet in the basement.  
11 Q Now I will show you Government's Exhibit 332.  
12 (Handed to the witness.)  
13 Q How does that exhibit relate to  
14 Government's Exhibit 309?  
15 A This is the blue Spiderman ball depicted in the  
16 photograph.  
17 Q All right.  
18 Did you seize the ball that you are holding?  
19 A Yes.  
20 MR. KABRAWALA: Move to admit.  
21 MR. LATO: No objection.  
22 THE COURT: 332 is admitted.  
23 (Whereupon, Government's Exhibit 332 was  
24 received in evidence.)  
25 Q I will show you what is marked as

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1 Government's Exhibit 313.  
2 (Handed to the witness.)  
3 A Yes.  
4 Q What is that a picture of, and when was it taken?  
5 A This is a picture of a Nerf gun taken in the basement  
6 of 3 High Gate Drive.  
7 Q On the date of the search warrant, the second search  
8 warrant?  
9 A Yes, sir.  
10 MR. KABRAWALA: The government moves to admit.  
11 MR. LATO: No objection.  
12 THE COURT: 313 is admitted.  
13 (Whereupon, Government's Exhibit 313 was  
14 received in evidence.)  
15 MR. KABRAWALA: Publishing.  
16 (At this time a document was exhibited on  
17 courtroom screen.)  
18 Q Where is that picture taken?  
19 A In the basement of 3 High Gate Drive.  
20 Q Showing you Government's Exhibit 333.  
21 (Handed to the witness.)  
22 Q Tell me how that object, Government's Exhibit 333,  
23 relates to the picture, Government's Exhibit 313.  
24 A This is the same object that is depicted in the  
25 photograph.

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1 Q The Nerf gun?  
2 A **Nerf gun.**  
3 MR. KABRAWALA: The government moves to admit.  
4 MR. LATO: No objection.  
5 THE COURT: 313 is admitted.  
6 (Whereupon, Government's Exhibit 313 was  
7 received in evidence.)  
8 Q I want you to flip through the images of the child  
9 that you identified.  
10 Just for the record, can you say whether you see  
11 this Nerf gun in any of those pictures.  
12 Let me withdraw the question and do the ball  
13 first.  
14 Government's Exhibit 332, do you see this ball  
15 in any of the pictures?  
16 A **Yes, I do.**  
17 Q For the record, which exhibits do you see it in?  
18 A **This is in Exhibit 511, which depicts Mr. Valerio's**  
19 **■■■■ sitting on the couch or sofa with one of the pillows**  
20 **that were seized.**  
21 Q This one here?  
22 A **Yes, sir.**  
23 **And next to her on the couch is that blue**  
24 **Spiderman ball.**  
25 Q Was she doing anything with the ball?

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1 A **In this picture she is just leaning on it.**  
2 Q Leaning on it?  
3 A **Yes.**  
4 Q And do you see the ball anywhere else, in any of the  
5 other pictures?  
6 THE COURT: What other exhibit are you holding  
7 up?  
8 MR. KABRAWALA: Judge, it is 334.  
9 A **There is a picture in 532. She is sitting on the**  
10 **same sofa, and it is a wider angle photo, where she is**  
11 **sitting with a blanket on her legs, and the pillows in the**  
12 **same location as it is in the previous photo.**  
13 **Those are the only two that I have.**  
14 Q Would you take a look at Government Exhibit 321 --  
15 321.  
16 A **I think I'm missing Exhibit 321.**  
17 **(Handed to the witness.)**  
18 Q Do you recognize that picture?  
19 A **Yes, I do.**  
20 Q Was that taken on February 25th -- from the  
21 defendant's basement, and is it an accurate depiction of  
22 what was seized from his house?  
23 A **Yes, it is.**  
24 MR. KABRAWALA: The government moves to admit.  
25 Late no objection.

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1 THE COURT: 321 is admitted.  
2 (Whereupon, Government's Exhibit 321 was  
3 received in evidence.)  
4 Q All right.  
5 I will show you what is marked as  
6 Government's Exhibit 338 and Government's Exhibit 324-A.  
7 (Handed to the witness.)  
8 MR. KABRAWALA: I'm publishing 321.  
9 (At this time a document was exhibited on  
10 courtroom screen.)  
11 Q Do you see -- let's start with this box that is  
12 324-A.  
13 Do you see that anywhere in the picture?  
14 A **Yes, I do.**  
15 Q Is it fair to say that it is in the right-hand side  
16 off at an angle?  
17 A **Yes, it is.**  
18 Q The same box?  
19 A **Yes, it is.**  
20 Q Was this box and the contents of the box which I will  
21 now -- which is labeled 324, the box, 324-A, and the  
22 contents of the box 324, were these seized from the  
23 defendants house on February 14th, 2014?  
24 A **Yes.**  
25 MR. KABRAWALA: The government moves to admit

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1 324 and 324-A.  
2 MR. LATO: No objection.  
3 THE COURT: They are admitted.  
4 (Whereupon, Government's Exhibits 324 and 324-A  
5 was received in evidence.)  
6 Q Read it aloud. What is this product?  
7 A **This is a Wifi interference free wall clock hidden**  
8 **camera kit.**  
9 Q Hidden camera kit?  
10 A **Yes.**  
11 Q Take a look at 324 itself.  
12 I will hold it -- how far am I away from you  
13 approximately?  
14 A **Five feet.**  
15 Q Do you see any cameras in it?  
16 A **No.**  
17 Q How far am I away from you now as I approach?  
18 A **Two feet.**  
19 Q Do you see a hidden camera in it?  
20 A **I see something that looks like a lens above the 6.**  
21 Q Okay.  
22 Take a look at Government Exhibit 338. It is in  
23 a box. We couldn't label the thing itself.  
24 What is this box?  
25 A **It is a box containing a blond wig.**



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- 1 Q Was that seized from the defendant's house on  
2 February 25th of this year?
- 3 A Yes, it was.
- 4 MR. KABRAWALA: The government moves to admit.  
5 THE COURT: Is that 338?  
6 MR. KABRAWALA: Yes, Judge.  
7 MR. LATO: No objection.  
8 THE COURT: 338 is admitted.  
9 (Whereupon, Government's Exhibit 338 was  
10 received in evidence.)
- 11 Q I will hold it up for you here.  
12 This wig, this is what was seized?
- 13 A Yes, it was.
- 14 Q Did you see this wig in any of the pictures or what  
15 resembles the wig in any of the pictures of what you  
16 previously identified?
- 17 A Yes, I have.
- 18 Government's Exhibit 528 is an image of  
19 Mr. Valerio's [REDACTED] wearing that wig.
- 20 Q Describe the image.
- 21 A It is an image of a little girl, nude, wearing a wig,  
22 standing next to the black chair, the black leather chair  
23 in the basement of 3 High Gate Drive.
- 24 Q The black leather chair depicted earlier in the  
25 basement?

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- 1 A Yes, correct.
- 2 Q And completely nude, partially nude?
- 3 A She appears completely nude.
- 4 Q Aside from --
- 5 A Aside from wearing that wig in an skewed manner.
- 6 Q Awkwardly --
- 7 A Awkwardly placed on the top of her head.
- 8 Q For the record, do you see the wig box in  
9 Government's Exhibit 321?  
10 (At this time a document was exhibited on  
11 courtroom screen.)
- 12 A Yes, I do.
- 13 Q Would you describe where it is in the picture.
- 14 A It is the -- the box that is holding the wig and some  
15 other items.
- 16 Q It is like in the middle of the picture, would you  
17 say?
- 18 A Yes.
- 19 Q Depicted to be in a box?
- 20 A Yes.
- 21 Q Is that fair to say?
- 22 A Yes, correct.
- 23 THE COURT: Why don't we take the morning break.  
24 MR. KABRAWALA: Just one question, Judge, I'm  
25 sorry.

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- 1 Q Where was that box in the defendant's house?
- 2 A In the basement.
- 3 MR. KABRAWALA: Thank you.  
4 THE COURT: We will take the morning break.  
5 Do not discuss the case, and we will reconvene  
6 at 11:30.  
7 (Whereupon, at this time the jury leaves the  
8 courtroom.)  
9  
10 (Whereupon, a recess was taken.)  
11  
12 THE COURT: Please be seated.  
13 Get the jury.  
14 THE CLERK: Jury entering.  
15 (Whereupon, the jury at this time entered the  
16 courtroom.)  
17 THE COURT: Will everyone be seated.  
18 MR. KABRAWALA: Thank you, Judge.  
19 BY MR. KABRAWALA:  
20 Q Agent Troyd, before the break you had testified about  
21 seeing a number of the items, the physical items you were  
22 discussing in the images of the [REDACTED] is that fair to  
23 say?
- 24 A Yes, that is fair.
- 25 Q Turning your attention to Government's Exhibit 539

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- 1 for identification.
- 2 A Yes.
- 3 Q Do you see Government's Exhibit 333 in that?
- 4 A Yes, I do.
- 5 Q Can you briefly describe what the picture is?
- 6 A This is a picture of Mr. Valerio's [REDACTED]. Next to  
7 her, to her right side, is that object, the gun. She is  
8 sitting on the couch that we identified in the basement of  
9 3 High Gate Drive.  
10 She is either taking off or putting on a  
11 costume.
- 12 Q Can you see any portion of Government's Exhibit 334,  
13 334-A, or 334-B, which is the sofa cushion, or the general  
14 area where it belongs to?
- 15 A Yes, behind her is one of those cushions behind that  
16 sofa.
- 17 Q I want you to take a look at  
18 Government's Exhibit 312.
- 19 A Yes.
- 20 Q What is that?
- 21 A This is a box that was found in the basement of  
22 3 High Gate Drive, containing various costumes and other  
23 items.
- 24 Q Did you find other costumes that were outside of that  
25 box generally in the basement of 3 High Gate Drive?

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1 **A Yes.**

2 **Q** And does that picture fairly and accurately depict  
3 the box that was found in the defendant's basement on  
4 February 25th, 2014?

5 **A Yes, it does.**

6 MR. KABRAWALA: Move to admit.

7 MR. LATO: No objection.

8 THE COURT: 312 admitted.

9 (Whereupon, Government's Exhibit 312 was  
10 received in evidence.)

11 MR. KABRAWALA: Publishing  
12 Government's Exhibit 312.

13 (At this time a document was exhibited on  
14 courtroom screen.)

15 **Q** Now, I'm going to show you some items.

16 MR. KABRAWALA: With the Court's permission, may  
17 I stand next to the witness for a few minutes?

18 THE COURT: Yes.

19 (Counsel approaches the witness stand.)

20 **Q** I would like to go through some of the items.

21 Government's Exhibit 359.

22 Is this something that was seized from the  
23 defendant's house on or about February 25th, 2014?

24 **A Yes.**

25 **Q** And do you see this item, 359, in the picture that is

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1 admitted as Government's Exhibit 312?

2 **A Yes, I do.**

3 MR. KABRAWALA: Move to admit  
4 Government's Exhibit 359.

5 MR. LATO: May I just look at it, please.

6 MR. KABRAWALA: Sure.

7 (Handed to Mr. Lato.)

8 MR. LATO: No objection.

9 THE COURT: 359 is admitted.

10 (Whereupon, Government's Exhibit 359 was  
11 received in evidence.)

12 **Q** Can you read the -- first of all, what is  
13 Government's Exhibit 359?

14 **A It is a nurse's costume.**

15 **Q** Can you read the size of the costume?

16 **A It says size, child. And then marked as medium, and  
17 in parenthesis, 8 to 10.**

18 **Q** Now I'm showing you what is marked as  
19 Government's Exhibit 343 for identification.

20 (Handed to the witness.)

21 **Q** Where did you find that?

22 **A This was found in the basement of 3 High Gate Drive.**

23 **Q** During the second search warrant?

24 **A Yes.**

25 MR. KABRAWALA: The government moves to admit.

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1 MR. LATO: I would like to see it.

2 MR. KABRAWALA: Of course. I will do that.

3 MR. LaPINTA: What number is that, sorry?

4 MR. KABRAWALA: 343.

5 (Handed to Mr. Lato.)

6 **Q** While the defense is looking at it, I will just have  
7 you look through the box. Read out the exhibit number  
8 that is noted, and just tell me where you found these  
9 things.

10 MR. LATO: No objection to 343, I believe.

11 THE COURT: 343 is admitted.

12 (Whereupon, Government's Exhibit 343 was  
13 received in evidence.)

14 **A Is that for each object?**

15 **Q** Yes.

16 The exhibit number on the tag, please.

17 **A 368. Should I describe the items?**

18 **Q** Describe where you found these items.

19 **A These items were found in the basement of 3 High Gate  
20 Drive.**

21 **Q** Generally speaking, what are they?

22 **A These are the packaging for various types of  
23 pantyhose and tights and body stockings.**

24 **Q** Okay.

25 Do they appear to be children's or adults?

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1 **A They appear to be adults.**

2 **Q** So it is fair to say that you found adult pantyhose  
3 as well when at the defendant's residence?

4 **A Yes, that's correct.**

5 MR. KABRAWALA: We are not moving to admit it.

6 **Q** Let's go through the box and we will talk about what  
7 you found in the box.

8 **A These are items -- 336 and 335, these were also found  
9 in the basement of 3 High Gate Drive.**

10 **Q** What are they?

11 **A Those are cheerleading pom-poms.**

12 MR. KABRAWALA: Move to admit.

13 MR. LATO: No objection.

14 THE COURT: 335 and 336 are admitted.

15 (Whereupon, Government's Exhibits 335 and 336  
16 were received in evidence.)

17 MR. KABRAWALA: Just for the record, this was  
18 admitted, Government's Exhibit 343. And I will just hold  
19 it up.

20 **Q** Would you tell me what it is.

21 Would you actually hold one of these pieces for  
22 me -- it is 342 and 343.

23 MR. KABRAWALA: The government moves to admit  
24 342.

25 MR. LATO: May I?

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1 MR. KABRAWALA: It is the top portion of 343.  
 2 (Items handed to Mr. Lato.)  
 3 MR. LATO: No objection.  
 4 THE COURT: 342 is admitted.  
 5 **Q** I'm going to hold this skirt and you hold the shirt  
 6 portion.  
 7 Hold it up and show the jury.  
 8 (The witness complies.)  
 9 **Q** You found this in the basement of 3 High Gate Drive?  
 10 **A Yes, that's correct.**  
 11 **Q** Red, white and blue; is that correct?  
 12 **A Yes.**  
 13 **Q** Describe what 347 is.  
 14 **A 347 is a packaging for children's tights and**  
 15 **children's stockings.**  
 16 **Q** Children's tights and stockings?  
 17 **A Yes. This one says children's fishnet tights.**  
 18 **Q** You found this in the basement of 3 High Gate Drive?  
 19 **A Yes.**  
 20 **Q** Did you seize it from there?  
 21 **A Yes, I did.**  
 22 **(Item handed to defense counsel.)**  
 23 MR. LATO: No objection.  
 24 THE COURT: 347 is admitted.  
 25 (Whereupon, Government's Exhibit 347 was

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1 received in evidence.)  
 2 **Q** A package containing children's tights and leggings,  
 3 I think you said fishnet stockings?  
 4 **A Yes.**  
 5 **Q** Is it fair to say they are for a girl?  
 6 **A Yes.**  
 7 **Q** Young girl?  
 8 **A Yes, for a child.**  
 9 **Q** Is it fair to say on one of them it is size small,  
 10 one size large, child's size large?  
 11 **A Can I see?**  
 12 **Q** Yes.  
 13 Child size large; is that fair to say?  
 14 **A Yes.**  
 15 **Q** Child size medium?  
 16 **A Yes, 4 to 6.**  
 17 **Q** Okay.  
 18 Various child stockings; is that correct?  
 19 **A Yes, that's correct.**  
 20 **Q** Did you observe any female children at 3 High Gate  
 21 Drive in both of your visits there?  
 22 **A No.**  
 23 **Q** What is Government Exhibit 325, and inside of which  
 24 is Government's Exhibit 326. What are these items?  
 25 **A 325 is the -- is the box for the Samsung camcorder.**

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1 **And 326 is the invoice received for the Samsung camcorder.**  
 2 MR. LATO: No objection.  
 3 MR. KABRAWALA: Move to admit.  
 4 THE COURT: 325 and 326 are admitted.  
 5 (Whereupon, Government's Exhibits 325 and 326  
 6 were received in evidence.)  
 7 **Q** 345, what is this?  
 8 **A This is a children's costume. It looks like a Wonder**  
 9 **Woman costume.**  
 10 **Q** Wonder Woman?  
 11 **A Yes.**  
 12 MR. KABRAWALA: Move to admit.  
 13 MR. LATO: Yes, it is Wonder Woman. No  
 14 objection.  
 15 THE COURT: 345 is admitted.  
 16 (Whereupon, Government's Exhibit 345 was  
 17 received in evidence.)  
 18 MR. LATO: Mr. Kabrawala, a portion fell out.  
 19 I'm sorry.  
 20 MR. KABRAWALA: Thank you.  
 21 **Q** 329. What is that?  
 22 **A 329 is a photograph of Mr. Valerio's [REDACTED] [REDACTED]**  
 23 **Q** Where did you find that?  
 24 **A This was on the table in the hallway of 3 High Gate**  
 25 **Drive, in a frame.**

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1 **Q** You took it out of the frame?  
 2 **A Yes, sir.**  
 3 **Q** And you recognize that image to be [REDACTED], the [REDACTED]?  
 4 **A Yes.**  
 5 **Q** Did you find it in the defendant's residence during  
 6 the second search warrant?  
 7 **A Yes.**  
 8 MR. KABRAWALA: The government moves to admit.  
 9 MR. LATO: One moment to confer with counsel,  
 10 please.  
 11 (Counsel confer.)  
 12 MR. LATO: No objection.  
 13 THE COURT: 329 is admitted.  
 14 (Whereupon, Government's Exhibit 329 was  
 15 received in evidence.)  
 16 MR. KABRAWALA: I will leave this stuff up here.  
 17 **Q** You can come up and we will talk about it -- you  
 18 know, why don't we talk about the red, white and blue  
 19 cheerleader outfit, 323 -- 342, 343, 335 and 336.  
 20 Can you look through the exhibit of the [REDACTED]  
 21 that we have been talking about.  
 22 **A Yes.**  
 23 **Q** And can you identify in which picture the outfit  
 24 and/or the pom-poms are depicted?  
 25 **A There are three images that are from the exhibits**

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1 **that show the outfit and the pom-poms.**

2 **Q** Sorry, what was that?

3 Right. Which numbered exhibits?

4 **A The first is Government's Exhibit 519.**

5 **The second is Government's Exhibit 521.**

6 **And the third is Government's Exhibit 537.**

7 **Q** Can you please describe the picture.

8 **A All three photos or images are what we would call an**  
 9 **up skirt photo of a girl wearing fishnet stockings, the**  
 10 **bottom of the cheerleading outfit and holding one of the**  
 11 **red and blue pom-poms. The face of the child is not**  
 12 **visible.**

13 **Q** With respect to -- you know what, I will publish  
 14 Government's Exhibits 329 -- Exhibit 329.

15 (At this time a document was exhibited on  
 16 courtroom screen.)

17 **Q** Is that the [REDACTED]?

18 **A Yes, sir.**

19 **Q** Now, you had mentioned the camcorder box and the  
 20 receipt contained therein.

21 By the way, was the receipt actually contained  
 22 within the box when you found it?

23 **A Yes, it was.**

24 **Q** Where was this box?

25 **A In the house at 3 High Gate Drive.**

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1 **Q** Do you recall specifically where it was?

2 **A I believe it might have been in the second floor**  
 3 **office closet.**

4 **Q** Okay.

5 So it was in a closet in the house?

6 **A Yes.**

7 **Q** Now, I want to show you Government's Exhibit 323. It  
 8 is not in your binder.

9 MR. KABRAWALA: I will need a hand with that.  
 10 (Object brought before the witness.)

11 **Q** Now, what is this?

12 **A A stage found in the basement of 3 High Gate Drive.**

13 **In the center of the stage is a light with a**  
 14 **housing that would direct the light upward. And next to**  
 15 **the light, which is only barely visible from the top, is a**  
 16 **camera lens.**

17 **Q** Did you find this in the defendant's house?

18 **A Yes, I did.**

19 **Q** Where was it?

20 **A It was in the basement.**

21 **Q** And did you find it in one of your searches?

22 **A Yes, on February 25th.**

23 **Q** 2014?

24 **A Yes.**

25 MR. KABRAWALA: The government moves to admit

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1 this exhibit.

2 Would the defense like to look at it again?

3 MR. LATO: One moment, please.

4 (Whereupon, at this time there was a pause in  
 5 the proceedings.)

6 MR. LATO: Your Honor, may we have a 30 second  
 7 sidebar?

8  
 9 (Whereupon, at this time the following took  
 10 place at the sidebar.)

11 MR. LATO: Just to place my objection on the  
 12 record, based on the Court's earlier ruling that this is  
 13 admissible, I anticipate any objection I make will be  
 14 overruled.

15 I just wanted to have my objection preserved,  
 16 and I object to everything relating to the filming that  
 17 doesn't directly relate to this girl. That's all.

18 THE COURT: Your objection is preserved and  
 19 overruled for the reasons discussed.

20 MR. LATO: Thank you, your Honor.

21  
 22 (Whereupon, at this time the following takes  
 23 place in open court.)

24 MR. KABRAWALA: Move to admit.

25 THE COURT: Government's Exhibit 323 is

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1 admitted.

2 (Whereupon, Government's Exhibit 323 was  
 3 received in evidence.)

4 MR. KABRAWALA: With Agent Troyd's assistance,  
 5 would the Court indulge Agent Troyd coming off the stand  
 6 for a minute and pointing out what he sees in this  
 7 exhibit?

8 THE COURT: Fine.

9 **Q** Let's bring it over across the way to the jury.

10 What do you observe?

11 **A This is a carpeted stage, the center of which is**  
 12 **open, allowing for a light to shine upwards. And next to**  
 13 **that light is the lens of a video camera with closed**  
 14 **circuit television.**

15 **Q** I will turn it around.

16 What do you observe about the structure of the  
 17 exhibit?

18 **A This exhibit was hand-made by someone. And the light**  
 19 **and the video camera were attached to the wooden**  
 20 **structure. It is basically a frame which was covered with**  
 21 **carpeting to be used as a stage.**

22 **Q** This is fairly heavy; is that correct?

23 **A Yes.**

24 **Q** Probably is a little unwieldy?

25 **A Yes, it is.**

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- 1 Q Was it hanging on the wall?
- 2 A **No, it was not.**
- 3 Q How was it facing when you found this in the
- 4 defendant's basement?
- 5 A **It was on the floor facing carpet side up next to, I**
- 6 **believe, it was a pool table that Mr. Valerio had.**
- 7 Q Thank you.
- 8 (The witness resumes the witness stand.)
- 9 Q So far you have testified to two camera devices, one
- 10 being the one we just showed the jury, and the other one
- 11 being the wall clock device.
- 12 Is that fair to say?
- 13 A **Yes, that's correct.**
- 14 Q Was that the only camera -- withdrawn.
- 15 Were those the only two cameras that you found
- 16 in the basement of 3 High Gate Drive?
- 17 A **No.**
- 18 Q Did you find another camera?
- 19 A **Yes.**
- 20 Q Can you describe how -- where the other camera was?
- 21 A **The other camera was placed in a suspended ceiling,**
- 22 **on a ceiling tile above the location where the videos or**
- 23 **the photo images of [REDACTED] had been taken.**
- 24 Q I'm showing you what has been marked as
- 25 Government's Exhibit 311 on your screen. And you can turn

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- 1 to it in your book if you like.
- 2 What is that a picture of?
- 3 A **This is a picture of where the Samsung camcorder was**
- 4 **found. And if you look at the picture, you will see that**
- 5 **the case, the camcorder case that was located on the**
- 6 **ceiling tile here.**
- 7 Q Now, is that picture a fair and accurate depiction of
- 8 the ceiling of 3 High Gate Drive's basement on
- 9 February 25th, 2014?
- 10 A **Yes, it is.**
- 11 MR. KABRAWALA: Move to admit.
- 12 THE COURT: What number is that?
- 13 MR. KABRAWALA: 311, Judge.
- 14 MR. LaPINTA: No objection.
- 15 THE COURT: 311 is admitted.
- 16 (Whereupon, Government's Exhibit 311 was
- 17 received in evidence.)
- 18 MR. KABRAWALA: I'm now publishing
- 19 Government's Exhibit 311.
- 20 (At this time a document was exhibited on
- 21 courtroom screen.)
- 22 Q Now I want you to very carefully tell us what we are
- 23 looking at. And try to describe it, if you can.
- 24 A **Okay.**
- 25 **What this is, it is the metal framework for a**

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- 1 **suspended ceiling. Some of the tiles were removed which**
- 2 **revealed the flooring and I'm not sure if it is called the**
- 3 **joists of the basement.**
- 4 **When you see the one tile that is removed, and**
- 5 **next to it the tile is still in place next to the light,**
- 6 **you can see a black object which was where the camera --**
- 7 **this is the camera inside its case. And that is where it**
- 8 **was located during the search warrant on February 25th.**
- 9 Q All right.
- 10 So to be clear, when agents were at the house on
- 11 February 25th, 2014, you went to the basement?
- 12 A **Correct.**
- 13 Q And was the basement ceiling exposed like this?
- 14 A **No, it was not.**
- 15 Q How did it look?
- 16 A **All the panels were in place in the basement ceiling.**
- 17 Q It is one of those panels where you sort of can lift
- 18 up the panel by itself?
- 19 A **Yes.**
- 20 Q What is it called, the kind of ceiling?
- 21 A **It is a drop-ceiling.**
- 22 Q A pretty standard type ceiling, you see it in
- 23 offices?
- 24 A **Offices, basements, and older houses, they use it to**
- 25 **cover up damaged ceilings.**

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- 1 Q Are they heavy to move, the ceiling tile?
- 2 A **Not at all.**
- 3 Q What made you look above the ceiling?
- 4 A **I have had previous experience where I discovered**
- 5 **guns, drugs, money, things hidden in suspended ceilings in**
- 6 **basements.**
- 7 Q There were no guns or money or drugs in the ceiling
- 8 here?
- 9 A **No.**
- 10 Q But you did find something?
- 11 A **Yes.**
- 12 Q Now I'm showing you -- well, I want you to do this.
- 13 I want you to describe -- showing the jury 311, which
- 14 appears to be a picture of the ceiling as the agent has
- 15 described it.
- 16 What I'm doing now is, I'm zooming in to about
- 17 the third from the bottom of the picture, in the middle,
- 18 like a little black something there.
- 19 What is that?
- 20 A **That is the camera case containing the Samsung**
- 21 **camcorder.**
- 22 **(Government counsel confer.)**
- 23 Q I show you what is marked as
- 24 Government's Exhibit 404.
- 25 (Handed to the witness.)



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1 Q Can you describe what these two things are that both  
2 comprise Exhibit 404.  
3 A **404 consists of a camera bag marked as Samsung, with  
4 a strap. And also a Samsung full HD 1920 by 1080  
5 camcorder.**

6 MR. KABRAWALA: Let me just walk it over to the  
7 defense.

8 (Item handed to defense counsel.)

9 MR. KABRAWALA: The government moves to admit  
10 Exhibit 404, which is the bag and the camera itself.

11 MR. LATO: Brief voir dire, your Honor.

12 THE COURT: Sure.

13 Let me explain to the jury what a voir dire is.

14 When someone offers an exhibit into evidence,  
15 the other side has the opportunity to what they call to  
16 voir dire, question the witness, just with regard to that  
17 item to see if they have an objection.

18 Mr. Lato will ask questions about that item, and  
19 he can cross-examine more fully when the turn comes.

20 MR. LATO: Thank you, your Honor.

21  
22 VOIR DIRE EXAMINATION

23 BY MR. LATO:

24 Q Agent Troyd, may I borrow that for a moment?

25 A **Yes, sir.**

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1 Q Good afternoon, sir.

2 A **Good afternoon.**

3 Q With respect to Exhibit 404, the camera and the case,  
4 did you find the camera inside the case in the ceiling?

5 A **That is your full question?**

6 Q Yes, sir.

7 A **Yes, sir.**

8 Q Was the camera case closed?

9 A **Yes, I believe it was.**

10 Q It looks like there is a piece of black electrical  
11 tape near the lens of the camera.

12 Is that how it was when you found it?

13 A **Yes, it was.**

14 Q Does the camera now look about the same way as it did  
15 when you found it in the ceiling tile?

16 A **Yes.**

17 MR. LATO: No objection.

18 THE COURT: 404 is admitted in evidence.

19 (Whereupon, Government's Exhibit 404 was  
20 received in evidence.)

21 BY MR. KABRAWALA:

22 Q Now, that was the question I was going to ask you  
23 about this.

24 This is the camera bag as depicted in the  
25 exhibit that is on the screen?

Troyd-Direct/Kabrawala

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1 A **That's correct.**

2 Q Now, counsel mentioned there was a piece of  
3 electrical tape on the front of it; is that correct?

4 A **Yes.**

5 Q Did you turn this camera over to anyone during the  
6 course of your investigation?

7 A **Yes.**

8 Q Who was that?

9 A **Detective Rory Forrestal.**

10 Q Is that the same person you turned over the Samsung  
11 memory card to?

12 A **Yes.**

13 Q Now, two of the items already admitted in evidence,  
14 Government's Exhibit 325, and the receipt that is inside  
15 of Government's Exhibit 325, and that is  
16 Government's Exhibit 326, tell us how you found this,  
17 these two items.

18 (Handed to the witness.)

19 A **This was found with the receipt and an instructional  
20 booklet inside at 3 High Gate Drive.**

21 Q And I want you to just describe the box. Describe  
22 the box.

23 A **This is a Samsung box. It lists items from Samsung  
24 Electronics, designed by Samsung, assembled in China. And  
25 written on the box is joeval5 underlined with the word**

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1 **password underlining it. And also circled is the  
2 www.Samsung.com.**

3 Q Look inside the box and pull out the invoice in the  
4 box.

5 A **Yes.**

6 **Exhibit 326 is the invoice.**

7 Q Describe what the invoice says?

8 A **It has a QVC logo.**

9 Q Let me do it this way: Can I have the exhibit?

10 A **Yes.**

11 Q I will publish it and you can read it from the  
12 screen.

13 (At this time a document was exhibited on  
14 courtroom screen.)

15 Q All right.

16 Let's talk about this invoice.

17 And I will focus in on the top portion.

18 I want you to read it out loud or describe it.

19 The QVC logo you mentioned?

20 A **Yes. The logo in the upper right-hand corner.**

21 **To the right of that it says sold to, it says  
22 Joseph Valerio, 3 High Gate Drive, Smithtown, New York,  
23 11787-1519.**

24 Q Who is it shipped to?

25 A **Shipped to Joseph Valerio, 3 High Gate Drive,**

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- 1 **Smithtown, New York, 11787-1519.**
- 2 Q How was it shipped?
- 3 A **Shipped through UPS, United Postal Service.**
- 4 Q What is the invoice date?
- 5 A **The invoice date is May 7, 2010.**
- 6 **The customer number ends in 6187. The order**
- 7 **number is 358501163.**
- 8 Q What is contained within the invoice? What is the
- 9 item?
- 10 A **It says, the description of the item is a Samsung**
- 11 **1080P full HD camcorder with ten times optical zoom and**
- 12 **four gigabit SD card.**
- 13 Q How much was it?
- 14 A **\$436.**
- 15 Q How much did it cost to ship and handle?
- 16 A **Shipping and handling was \$10.44.**
- 17 Q And what was the total price?
- 18 A **\$446.44.**
- 19 Q And how was it paid?
- 20 A **It was paid with a Visa.**
- 21 Q And was there tax?
- 22 A **Yes, \$38.51 in tax.**
- 23 Q What was the total amount?
- 24 A **The total amount was \$484.95.**
- 25 **Could you move it a little bit more.**

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- 1 Q Where was it returned to?
- 2 A **QVC returned to 100 QVC Boulevard, Rocky Mount, North**
- 3 **Carolina 27815-0000.**
- 4 Q There is apparently one of those items with free
- 5 postage when you return the item on the back of
- 6 Government's Exhibit 326. Fair to say?
- 7 A **Yes.**
- 8 Q What is the return address of the person sending the
- 9 package, whose name is it?
- 10 A **Joseph Valerio at 3 High Gate Drive, Smithtown, New**
- 11 **York 11787-1519.**
- 12 Q Item description, Samsung 1080P, etcetera.
- 13 So the record is very clear, is this box
- 14 apparently for that camera?
- 15 A **Yes.**
- 16 Q And is this camera a full HD 1080 Samsung camcorder?
- 17 A **Yes.**
- 18 Q By the way, where does it say it was made on the
- 19 camera itself for assembly?
- 20 A **It says designed by Samsung and assembled in China.**
- 21 Q And just so we are very clear, I will bring over this
- 22 box and put it under -- by the way, I don't know if I
- 23 asked you this, but this box and this camera are described
- 24 in this QVC receipt; is that correct?
- 25 A **Yes.**

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- 1 Q And the receipt was found inside the box; is that
- 2 correct?
- 3 A **Yes.**
- 4 Q And just for the record, I will show the image
- 5 actually on the box itself.
- 6 I will open this up and looking at this camera
- 7 in my hand, Government's Exhibit 404, and looking at the
- 8 image on the box on the overhead, does it appear to be the
- 9 same camera?
- 10 A **Yes.**
- 11 MR. KABRAWALA: Judge, I will be going through a
- 12 number of emails at this point which will probably consume
- 13 the next hour at least?
- 14 THE COURT: How about going to 12:45, 15
- 15 minutes.
- 16 MR. KABRAWALA: All right. Thank you.
- 17 Q What I would like to do now is shift gears.
- 18 There was testimony yesterday by Robert Egan of
- 19 Cablevision.
- 20 Now, the testimony -- correct me if I'm wrong,
- 21 among other things Mr. Egan testified that Cablevision
- 22 produced emails in response to a search warrant.
- 23 MR. LATO: Objection to the recitation.
- 24 THE COURT: Just ask the question.
- 25 MR. KABRAWALA: Okay.

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- 1 Q Did you receive a return for the search warrant?
- 2 A **Yes.**
- 3 Q And did Cablevision provide it to you?
- 4 A **Yes.**
- 5 Q For the email address joeval5@optonline.net?
- 6 A **Yes, correct.**
- 7 Q And I want to have you actually look at the exhibit
- 8 book in front of you. And I will read off a number of
- 9 exhibits.
- 10 I have provided the list to the defense and I
- 11 will recite it now, and then what we will do is talk about
- 12 those exhibits.
- 13 203.
- 14 MR. KABRAWALA: If I may, Judge, can I approach
- 15 so the witness can see my list?
- 16 THE COURT: Yes.
- 17 (Counsel approaches the witness stand.)
- 18 Q 203, 205 -- don't take them out yet.
- 19 A **Yes.**
- 20 Q 206?
- 21 A **Yes.**
- 22 Q 208, all the way through 231.
- 23 A **Yes.**
- 24 Q 235?
- 25 A **I have all those. 235. Yes, I have it.**

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- 1 Q 238.  
 2 A **Yes, 238.**  
 3 Q 238-A.  
 4 A **That I'm missing.**  
 5 Q I will get you a copy of 238-A.  
 6 A **Yes.**  
 7 Q 241.  
 8 A **Okay.**  
 9 Q 243.  
 10 A **Okay.**  
 11 Q 244 and 245.  
 12 A **244 and 245, okay.**  
 13 Q 245-A and B.  
 14 A **I'm missing 245-B.**  
 15 Q 245-B now.  
 16 246 and 247.  
 17 A **I have those.**  
 18 Q I am handing you 238-A, and if you can place it where  
 19 it belongs.  
 20 A **Sure.**

(Continued on the next page.)

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- 1 **DIRECT EXAMINATION**  
 2 BY MR. KABRAWALA: (Continued)  
 3 Q I'm showing you 245-B on the screen, the sixth page  
 4 in the e-mail. Scroll through it.  
 5 Do you see it?  
 6 A **I don't see it yet.**  
 7 Q Do you see it now?  
 8 A **Yes.**  
 9 Q Keep scrolling.  
 10 A **Yes.**  
 11 Q Keep scrolling.  
 12 A **Yes.**  
 13 Q Okay. All of those exhibits that I just read aloud  
 14 to you, where are those from?  
 15 A **These are from -- the exhibits that we just looked at**  
 16 **or identified were provided to me in the search warrant**  
 17 **return from Cablevision.**  
 18 Q From Government's Exhibit 200?  
 19 A **Yes.**  
 20 Q That's a disk from Cablevision?  
 21 A **Yes.**  
 22 MR. KABRAWALA: The Government moves to admit  
 23 all of those exhibits into evidence, Judge.  
 24 MR. LATO: Just so I have the numbers again, can  
 25 you repeat them, Mr. Kabrawala?

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- 1 MR. KABRAWALA: 203, 205, 206, 208 to 231.  
 2 MR. LATO: No objection.  
 3 MR. KABRAWALA: And 235, 238, 238-A, 241, 243,  
 4 244, 245, 255-A [sic], 245-B, 246, 247.  
 5 MR. LATO: I have objections to three of those  
 6 exhibits.  
 7 MR. KABRAWALA: Which ones?  
 8 MR. LATO: 241, 244 and 245, and make it a  
 9 fourth, 245-B.  
 10 THE COURT: So with the exceptions of those four  
 11 are admitted, and we'll discuss it after the lunch break.  
 12 MR. KABRAWALA: That sounds fair.  
 13 (Whereupon, Government Exhibit 235, 238, 238-A,  
 14 243, 255-A, 246, and 247 were received in evidence.)  
 15 BY MR. KABRAWALA:  
 16 Q Generally speaking, did you find e-mails between the  
 17 defendant and other people on the exhibits that were  
 18 shown?  
 19 A **Yes.**  
 20 Q Are all of them between the defendant and Kalichenko?  
 21 A **No.**  
 22 Q I want to talk about a couple of them that are not  
 23 between the defendant and Kalichenko.  
 24 Please turn to Government's Exhibit 238-A.  
 25 A **Yes.**

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- 1 MR. KABRAWALA: I'm going to publish it.  
 2 Q Is it fair to say this is from joeval5@optonline.net  
 3 to a person named Jarmila Berezovska at  
 4 jarmila.berezovska1@hotmail.com?  
 5 A **Yes.**  
 6 Q I will show you number 238-A first.  
 7 A **We're looking at 238 now.**  
 8 Q Look at 238-A.  
 9 A **A?**  
 10 Q Yes.  
 11 A **All right.**  
 12 Q I'll read aloud the message header information from  
 13 joeval5@optonline.net to Jarmila Berezovska, sent  
 14 December 7, 2013, at 7:38:22 p.m.  
 15 Subject: Sister Bernadette and her "Imperiale"  
 16 family.  
 17 Did I read that correctly?  
 18 A **Yes.**  
 19 Q I'm going to just read aloud from the top, and then  
 20 you just tell me if I read it in correctly. How is that?  
 21 A **Okay.**  
 22 Q Dear, here is some of the information for my sister  
 23 and family.  
 24 My sister's family, the Imperiale family,  
 25 married surname, Imperiale. And it provides a street

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- 1 address, city of Massapequa, state of New York.  
 2 Scrolling down.  
 3 My brother-in-law, my brother-in-law, paren, his  
 4 birth date.  
 5 Did I read that correctly?  
 6 **A Yes.**  
 7 **Q** It provides a date of birth, and it says in  
 8 parentheses, 50 years old?  
 9 **A Correct.**  
 10 **Q** Then it says: My sister, your friend, Bernadette  
 11 Imperiale. Correct?  
 12 **A Correct.**  
 13 **Q** Then it says, the next paragraph down, her birth  
 14 date.  
 15 And it is a year in 1963 is her birth date?  
 16 **A Yes.**  
 17 **Q** 50 years old?  
 18 **A Yes.**  
 19 **Q** Then apparently it describes who this person, the  
 20 sister, Bernadette, is; is that fair to say?  
 21 **A Yes.**  
 22 **Q** Can you read aloud from where it says "stay-at-home  
 23 mother" all the way down to almost the last sentence where  
 24 it says "sister Bernadette and kids"?  
 25 **A Stay-at-home mother. How you know my sister? If**

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- 1 **Immigration asks you, you can say that you looked out for**  
 2 **her children, Mario and [REDACTED] to help her out at home**  
 3 **with the kids. Bernadette has an eye disease called**  
 4 **glaucoma...it leaves a person part blind in their eye or**  
 5 **eyes. So we could say a friend introduced you to her and**  
 6 **then you both became friends. If the questions go further**  
 7 **and my name shows up on the system, we simply say we (me**  
 8 **and you) meet when you came in August to help out my**  
 9 **sister Bernadette and the kids.**  
 10 THE COURT: All right.  
 11 **Q** Scrolling down, the last sentence in that e-mail,  
 12 what does it say?  
 13 **A They next e-mail for the kids.**  
 14 **Q** And as a reminder, this e-mail was sent December 7,  
 15 2013, at 7:38 p.m.?  
 16 **A Correct.**  
 17 **Q** Now turning to Government's Exhibit 238, I described  
 18 that earlier.  
 19 **A Yes.**  
 20 **Q** And it is from joeval5@optonline.net. It is to that  
 21 person, Jarmila Berezovska?  
 22 **A Correct.**  
 23 **Q** And you met Jarmila Berezovska during the first day  
 24 of the search warrant?  
 25 **A Yes, I did.**

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- 1 **Q** Is it fair to say that this e-mail of December 7,  
 2 2013, was sent about 20 minutes later, at 7:58 p.m.?  
 3 **A Yes.**  
 4 **Q** And it says, subject line: Children?  
 5 **A Yes.**  
 6 **Q** And the previous mail, that would be a forthcoming  
 7 e-mail?  
 8 **A The next e-mail for the kids.**  
 9 **Q** By the way, did the defendant say who Jarmila  
 10 Berezovska was when you spoke with him on January 28,  
 11 2014, during the first search warrant?  
 12 **A Yes.**  
 13 **Q** What did he say?  
 14 **A That she was his girlfriend from Czechoslovakia.**  
 15 **Q** All right. I want you to read now -- I'll read it.  
 16 First paragraph. My nephew: Mario -- and it  
 17 provides the last name -- age: Ten. It provides the date  
 18 of birth and the year of 2003.  
 19 Read the parentheses that follow that.  
 20 **A (He goes to elementary school in the fifth grade.)**  
 21 **Q** Continue reading.  
 22 **A He is active boy. Enjoys being home most of the**  
 23 **time...TV, cartoons, movies, girlfriends, that stuff.**  
 24 **Q** Next paragraph it says: My [REDACTED]: [REDACTED] -- it  
 25 provides the last name -- age: Eight.

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- 1 By the way, age eight on the date of the e-mail  
 2 is in 2013?  
 3 **A Yes.**  
 4 **Q** It says, sometime in 2005. It provides the month and  
 5 it says, 2005?  
 6 **A Yes.**  
 7 **Q** Why don't you read the rest of the paragraph for us.  
 8 **A (She goes to elementary school in the third grade but**  
 9 **different school from Mario, her brother.) She is active**  
 10 **in gymnastics after school...TV, cartoons, movies, girly**  
 11 **stuff.**  
 12 **Q** All right. Then it goes on to say: They stay by  
 13 mother's home some days during the week.  
 14 Is that correct?  
 15 **A Correct.**  
 16 **Q** Then it goes on in the next paragraph to say: My  
 17 sister's home phone number.  
 18 And then it says: They never pick up the phone  
 19 anyway. That's good.  
 20 **A Correct.**  
 21 **Q** And it provides a phone number, an actual number?  
 22 **A Yes.**  
 23 **Q** A 516 area code?  
 24 **A Yes.**  
 25 **Q** Then it says --

## Proceedings

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1 **A Correct.**

2 **Q** And it says in the same paragraph, "mother's phone  
3 number," and provides another 516 telephone number?

4 THE COURT: Why don't we break for lunch. We'll  
5 reconvene at 2 o'clock.

6 Do not discuss the case.

7 (Whereupon, at this time the jury exits the  
8 courtroom.)

9 THE COURT: Okay. If you can all be seated.

10 Mr. Lato, tell me what the nature of the  
11 objections are for those exhibits so I can look at them  
12 during the lunch break.

13 MR. LATO: Exhibit 241 refers to Mr. Valerio's  
14 prior offense at the wave pool and 404(b) evidence. And  
15 it looks like it just slipped through the -- the  
16 Government acknowledged that when I brought it to their  
17 attention, and we'll try to work on it to see if the  
18 exhibit can be saved by redacting any reference to 404(b)  
19 evidence.

20 MR. KABRAWALA: Judge, to save time, the  
21 Government will withdraw -- it will not seek to admit 241.

22 THE COURT: That's out.  
23 244?

24 MR. LATO: I just wanted to bring it up, your  
25 Honor. One moment.

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1 244 is an e-mail exchange between Mr. Valerio  
2 and Jarmila Berezovska as opposed to Jarmila Berezovska  
3 and Olena Kalichenko, and it already has a reduced  
4 probative value by virtue of the fact it is between  
5 Mr. Valerio and Ms. Berezovska.

6 There's a 403 problem in there.

7 Does your Honor have the exhibit?

8 THE COURT: Yes, I'm looking at it.

9 MR. BODE: Maybe we can short-circuit it.

10 We're willing on that one to redact out the  
11 text; leave the headers.

12 It's relevant he's using joeval5@optonline.net  
13 to his girlfriend because it shows dominion and control,  
14 because we went over the account with Cablevision. He's  
15 talking to his girlfriend on it consistently. So we'll  
16 redact out the text and leave the headers so it shows the  
17 use of -- on the account.

18 MR. LATO: I agree that solves the problem.

19 MR. BODE: If she was to testify, all bets are  
20 off, and we may need to go into the content of it at that  
21 point.

22 THE COURT: And the subject is out as well.

23 MR. BODE: It's up to the defense.

24 MR. LATO: Other than the fact that it shows he  
25 used that e-mail account, so yes.

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1 THE COURT: So from the "to" to the "send."

2 MR. BODE: We'll take out the text. We'll put  
3 in black so you can see there is something in there,  
4 because otherwise it is weird they are sending e-mails  
5 back and forth with no e-mail content. But we'll black it  
6 all out.

7 THE COURT: And 245?

8 MR. LATO: It looks like an e-mail between  
9 Mr. Valerio and some unknown individual.

10 If I understand the relevance now, it is just to  
11 show he's using the account.

12 MR. KABRAWALA: Judge, it absolutely shows  
13 dominion and control over the e-mail account. An  
14 individual, actually the defendant's son, talking about  
15 the Islanders game and getting tickets.

16 There is another exhibit that related to it that  
17 he's getting e-mails into his account, the same IP  
18 address, the same address discussed yesterday. It shows  
19 dominion and control, and it's not prejudicial. If  
20 anything, it shows that -- withdrawn.

21 And it says, "My e-mail account is  
22 joeval5@optonline.net." I mean, it is very clear that it  
23 shows dominion and control over the e-mail.

24 MR. LATO: I agree.

25 Now I know what they will offer, I withdraw my

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1 objection.

2 THE COURT: That will be admitted.

3 MR. LATO: 245-B, I don't have a copy of that.

4 THE COURT: I don't have that one either.

5 MR. KABRAWALA: 245-B, we don't have copies.  
6 I'm sorry.

7 MR. BODE: I think there is a set up there.

8 MR. KABRAWALA: No, it's not up here. I'll

9 actually pull it up on the screen.

10 It's an e-mail, a six-page e-mail, from  
11 joeval5@optonline.net, and then it is essentially -- the  
12 text that follows looks like promotional stuff from  
13 Ticketmaster. It's six pages of promotional e-mail.

14 MR. LATO: I withdraw my objection because it  
15 follows on the prior one. Just used to show the account,  
16 which is obviously probative. There is no 403 problem.  
17 I'll withdraw my objection.

18 THE COURT: So 241 is out, and 244-B will be  
19 redacted, and 245 and 245-B will be admitted.

20 MR. KABRAWALA: Thank you, Judge.

21 THE COURT: See you at 2:45.

22 (Recess taken.)

23

24

25



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1 AFTERNOON SESSION

2 THE COURT: The Government has redacted 244.

3 Is that acceptable to the defense?

4 MR. LATO: One moment, please.

5 THE COURT: Sure.

6 MR. LATO: Yes.

7 THE COURT: So I'll give an instruction to the

8 jury about redaction, that they should consider only

9 relevant material, not to speculate what has been

10 redacted.

11 And I'll say 241 has been withdrawn by the

12 Government, and I'll admit 245 and 245-B.

13 (Whereupon, Government Exhibits 245 and 245-B

14 were received in evidence.)

15 THE COURT: Seat the jury.

16 **STEVEN TROYD,**

17 having been previously sworn, resumed the stand

18 and testified further as follows:

19 (Whereupon, the jury at this time enters the

20 courtroom.)

21 THE COURT: All right. Everyone be seated.

22 Members of the jury, before we continue, there

23 were four exhibits I had reserved a ruling on to discuss

24 with the lawyers during the lunch break.

25 As a result of that discussion, the Government

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1 withdrew Exhibit 241. They withdrew that exhibit.

2 Government's Exhibit 244, the Government is only

3 seeking to put in certain portions of that e-mail

4 exchange. So the rest of the e-mail contained is

5 irrelevant information and has been redacted. There is a

6 black box in it because the rest of it was not relevant.

7 I want to give you an instruction with respect

8 to redactions.

9 Anytime there is a redaction of the document,

10 you shouldn't speculate what is behind that material. It

11 is simply irrelevant, and you are not to speculate and are

12 not to consider that in any way.

13 And 245 and 245-B are admitted in evidence.

14 So let's continue.

15 MR. KABRAWALA: Thank you, Judge.

16 THE COURT: And 244, the redacted version of

17 244, is also admitted.

18 (Whereupon, Government Exhibit 244 was received

19 in evidence.)

20 MR. KABRAWALA: Thank you, Judge.

21 DIRECT EXAMINATION

22 BY MR. KABRAWALA: (Continued)

23 **Q** Before the lunch break, do you recall discussing an

24 e-mail between joeval5@optonline.net and an e-mail of

25 jarmila.berezovska1@hotmail.com?

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1 **A Yes.**

2 **Q** I will show you another exhibit. Take a look at

3 Government's Exhibit 244.

4 **A Yes.**

5 **Q** What is that e-mail?

6 **A This is an e-mail from Joe Valerio at**

7 **joeval5@optonline.net to jarmila.berezovska1@hotmail.com,**

8 **sent on April 14, 2013.**

9 MR. KABRAWALA: I'm publishing.

10 **Q** Is it fair to say that this is a 15-page e-mail --

11 sorry -- exhibit?

12 **A Yes, that's correct.**

13 **Q** Is it also fair to say we refer to it as an e-mail

14 chain, that is, a series of sent and responded-to e-mails?

15 **A Yes.**

16 **Q** March 2013 to about 14, 2013, is that fair to say,

17 that that spans?

18 **A Yes.**

19 **Q** Your review of those e-mails, are they all between

20 joeval5@optonline.net and Ms. Berezovska?

21 **A Yes.**

22 **Q** And I think you mentioned who Ms. Berezovska was.

23 Remind us who she is, please.

24 **A Jarmila Berezovska is Mr. Valerio's girlfriend from**

25 **Czechoslovakia.**

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1 **Q** I'm directing your attention to Government's

2 Exhibit 229-A.

3 **A Yes.**

4 MR. KABRAWALA: Publishing Government's

5 Exhibit 229-A.

6 **Q** Can you just briefly describe what this e-mail is,

7 what the date is?

8 **A This is an e-mail from Joe Valerio at**

9 **joeval5@optonline.net to kalichenkoes --**

10 **Q** One moment. We're not on the same page.

11 Look at the screen. The screen is the one that

12 has been admitted.

13 Do you see the screen?

14 MR. KABRAWALA: I'm sorry, I may have mismarked

15 it. I'll change the exhibit number of the one before you.

16 **Q** Do you see the one I'm looking at, being admitted as

17 229-A?

18 **A Yes.**

19 **Q** Let's talk about this one.

20 MR. LAPINTA: Hold on.

21 Which one are you referring to? Not the one on

22 the screen. Which one?

23 MR. KABRAWALA: The only one that has been

24 admitted is the one on the screen, 229-A.

25 **Q** Let me describe the e-mail. It appears to be from

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- 1 joeval5@optonline.net, and it is forwarded to himself  
 2 eventually at joeval5@optonline.net?  
 3 **A Correct.**  
 4 **Q** And the "send" date is September 15, 2012; is that  
 5 right?  
 6 **A Yes.**  
 7 **Q** And the forwarded message, it's from "Ticketmaster,"  
 8 right?  
 9 **A Yes.**  
 10 **Q** Also from 7/15 -- I'm sorry, September 15, 2012?  
 11 **A Yes.**  
 12 **Q** The subject is: Joseph, see it live. Tickets on  
 13 sale and special offers this week?  
 14 **A Yes.**  
 15 **Q** In your review of this e-mail, approximately six  
 16 pages long, does it appear to be a promotional e-mail sent  
 17 by Ticketmaster to that address at joeval5@optonline.net?  
 18 **A Yes.**  
 19 **Q** Just review the e-mail. Take a look at it.  
 20 And does the e-mail appear to be for promotional  
 21 items that are in the New York area?  
 22 **A Yes.**  
 23 **Q** Beacon Theatre. Do you know where that is?  
 24 **A I'm not sure. I think it is in Manhattan.**  
 25 **Q** Radio City Music Hall. Do you know where that is?

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- 1 **A Yes.**  
 2 **Q** Is that in New York City?  
 3 **A Yes, it is.**  
 4 **Q** Other items all from New York. All New York venues,  
 5 right?  
 6 **A Yes.**  
 7 **Q** Can you turn to Government's Exhibit 245, please?  
 8 **A Yes.**  
 9 **Q** To make sure we're on the same page, the date of the  
 10 e-mail is 3/18/13.  
 11 **A Yes, this is the same.**  
 12 MR. KABRAWALA: I'm going to publish it now.  
 13 **Q** So, this is an e-mail from -- that same e-mail we've  
 14 been talking about, joeval5@optonline.net. It appears to  
 15 be addressed to an Andre P. Valerio at gmail.com, sent  
 16 March 18, 2013.  
 17 And it's a forward, isn't it?  
 18 **A Yes.**  
 19 **Q** Your Ticketmaster order, right?  
 20 **A Correct.**  
 21 **Q** Do you know who Andre Valerio is?  
 22 **A Andre Valerio is Mr. Valerio's son.**  
 23 **Q** The son?  
 24 **A Yes.**  
 25 **Q** Read the text of the message, the body of that

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- 1 message.  
 2 **A Good seats. Between last row in section 115 and**  
 3 **first row of section 200. Good eye level and chance for**  
 4 **pucks...it is level with the blue line behind visitors,**  
 5 **the side where the Isles shoot twice.**  
 6 **Just click on to print your tickets or my**  
 7 **account. Enter my e-mail, joeval5@optonline.net (could be**  
 8 **small case, try it), then my password: Joe Valerio,**  
 9 **J-O-E-V-A-L (it's small case), then print...I got the**  
 10 **Canon copier to work...but it needs new ink).**  
 11 **Q** My e-mail, joeval5@optonline.net?  
 12 **A I'm sorry?**  
 13 **Q** It says, "my e-mail joeval5@optonline.net," in the  
 14 message?  
 15 **A Yes.**  
 16 **Q** And it is from joeval5@optonline.net, right?  
 17 **A That's correct.**  
 18 **Q** To Andre Valerio, his son?  
 19 **A That's correct.**  
 20 **Q** And read further down for the sake of completeness  
 21 here. This appears to be Ticketmaster. You purchased two  
 22 tickets.  
 23 That's what it says, right?  
 24 **A Yes.**  
 25 **Q** The Islanders hosting the Canadians?

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- 1 **A Yes.**  
 2 **Q** Someone named Joseph Valerio ordered those tickets,  
 3 it appears?  
 4 **A Yes.**  
 5 **Q** Paid \$324.40 for those tickets, apparently. A lot of  
 6 money?  
 7 **A Yes.**  
 8 **Q** Look at 245-A.  
 9 **A Yes.**  
 10 **Q** I'll publish it.  
 11 What do you recognize this document to be?  
 12 **A This is an e-mail from Joseph Valerio to Andre**  
 13 **Valerio.**  
 14 **Q** You were here yesterday when the Cablevision  
 15 representative, Robert Egan, testified, right?  
 16 **A Yes.**  
 17 **Q** And he had referred to --  
 18 MR. LATO: Objection.  
 19 THE COURT: Sustained.  
 20 **Q** Had he referred to an IP address?  
 21 **A Yes.**  
 22 **Q** I want to show you 205-A that was admitted during  
 23 Mr. Egan's testimony. Showing you what has been already  
 24 admitted as 205-A.  
 25 What is the IP address that Mr. Egan read into

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1 the record yesterday on 205-A?

2 **A That is 69.118.191.98.**

3 **Q** Remember that number.

4 I'm telling you again now that was entered as

5 245-A. Is that it?

6 **A Yes.**

7 **Q** Do you see that same number?

8 **A Yes.**

9 **Q** Read it aloud, would you?

10 **A 69.118.191.98.**

11 **Q** Do you see the subject line written in the e-mail

12 header portion of 245-A?

13 **A Yes. "Forward: Your Ticketmaster order."**

14 **Q** What is the date of this header?

15 **A March 18th, 2013.**

16 **Q** Now, you just testified about Government's

17 Exhibit 245, didn't you?

18 **A Yes, I did.**

19 **Q** When was that e-mail sent, 245?

20 **A March 18, 2013.**

21 **Q** Same as the header, right?

22 **A Yes.**

23 **Q** "Forward: Your Ticketmaster order" is the subject?

24 **A That's correct.**

25 **Q** All right. And reviewing the search warrant --

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1 withdrawn.

2 Reviewing the e-mails that were produced by

3 Cablevision in response to a search warrant, did you find

4 e-mails between joeval5@optonline.net and

5 kalichenkoes@mail.ru?

6 **A Yes, I did.**

7 **Q** I'd like to discuss with you some of those e-mails.

8 Take a look at Government's Exhibit 208 which is

9 in evidence.

10 MR. KABRAWALA: I'll publish them.

11 THE WITNESS: Okay.

12 **Q** Is it fair to say it is between joeval5@optonline.net

13 to kalichenkoes@mail.ru?

14 **A Yes.**

15 **Q** Dated March 15, 2012, subject: Forward: Helena?

16 **A Correct.**

17 **Q** Read aloud starting from the second sentence of the

18 second paragraph where it says "When I looked" to where it

19 says "All that I ask you."

20 Showing you where it starts.

21 Why don't you start from the beginning of the

22 second paragraph.

23 **A It was a nice reminder of those pics you took back a**

24 **few months ago and all the possibilities of all the**

25 **creative things we can do on video. If and when you were**

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1 **to arrive here, when I look back at the videos you made of**

2 **you and [REDACTED] together, I said to myself, this can be**

3 **very good if she can comply to my demands and not**

4 **challenge them. Helena, the bottom line is that you'll**

5 **have to do all I ask you to do.**

6 **Q** Okay.

7 Now I'll have you turn to Government's

8 Exhibit 210 in evidence.

9 **A Yes.**

10 MR. KABRAWALA: I will publish it.

11 **Q** Is it fair to say this is an e-mail from Joe Valerio

12 to Kalichenko sent on March 25, 2012?

13 **A Yes.**

14 **Q** Same subject line: Forward: Helena.

15 I want you to read about halfway down -- I'll

16 show the entire page first.

17 If you look about halfway down, the second

18 paragraph. Please read aloud starting where it says

19 "Here, when and why" to where it says "kinky stuff on

20 video."

21 Do you see that?

22 **A Yes.**

23 **Q** To make it easier, read from "here."

24 **A Here in NY, if you ever realistically get to NY, when**

25 **you can with the right visa, let me know, and I hope maybe**

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1 **to have room for you. Again, I only see what's before me,**

2 **as I'm only being honest with you so I don't hurt you.**

3 **The plus with you would have been your sweet tits and**

4 **having your daughter as well...for us to enjoy some kinky**

5 **stuff on video. And quite frankly speaking, Helena, you**

6 **would be literally crawling around the carpet floor naked**

7 **or just in panty hose as my slave.**

8 **Q** Please turn to Government's Exhibit 211. It's in

9 evidence, and I'm going to publish it.

10 Just describe the e-mail, please.

11 **A This is an e-mail from Joe Valerio at**

12 **joeval5@optonline.net to kalichenkoes@mail.ru, sent March**

13 **28, 2012, at 10:23 a.m.**

14 **Q** Now starting about halfway down the page, there's a

15 sentence that begins, "It's good to see little [REDACTED]"

16 Do you see that?

17 Do you see where I'm circling right there?

18 **A Yes, okay. I see it.**

19 **Q** Go ahead and read from there all the way down to

20 "hair dyed blonde."

21 **A Yes, of course it is good to see little [REDACTED]**

22 **growing up, nice and firm, of course, being that I have**

23 **control over [REDACTED]. I want to see her in long blonde**

24 **hair. And as for you, right, of course, when you get that**

25 **visa a to New York, I'll send you to the salon to get your**

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1 hair dyed to blonde.

2 Q Now, jump down the page and read that entire next  
3 paragraph: I'm picking up Julia from her relatives later  
4 today...

5 A I'm picking up Julia from her relatives later today.  
6 I'm going to fuck her even harder now that I'm thinking  
7 what I'll have you for and what you will be doing for me  
8 on demand. As my imagination and cock run hard, and while  
9 for all my genius and creativity I'm truly blessed and God  
10 has found me to leave me both with my grasp with strong  
11 hands. I'm sending out \$100 to who and where you want me  
12 to send it. I want those pussy and tit videos, and be  
13 very creative. Helena, this depends what you show me in  
14 writing and video if you want to continue to be part of my  
15 circle.

16 Stay safe and clean. Your body belongs to me,  
17 your master. Understand, clean.

18 MR. KABRAWALA: For the record 211-A was  
19 admitted yesterday through Mr. Egan from Cablevision, and  
20 it will be published again.

21 Q It's the same date of that e-mail, 3/28/12?

22 A That's correct.

23 Q There's an IP there. 24.186.38.241?

24 A That's correct.

25 Q That is one of the IP addresses that Mr. Egan

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1 testified to about yesterday?

2 A Yes.

3 Q What do you recall about that?

4 A That this address belonged to optonline in the  
5 tristate area.

6 Q 213, please.

7 A 213?

8 Q Yes, sir.

9 Read the entire body. I'll publish it now.

10 You know what? Before you read it, is it

11 correct to say it is from Joe Valerio to

12 kalichenkoes@mail.ru?

13 A Yes.

14 Q Sent on April 12, 2012?

15 A Yes.

16 Q Read the entire body.

17 A Okay, Helena. Get to Moscow. Show me what you got  
18 in pics, video, and I'll get you back to the Ukraine.

19 Remember my words: You will need to do all I ask you in

20 video with [REDACTED] when you are with her. This unique  
21 situation separates you from the rest I have here. I will  
22 tell you what to buy and both wear for these videos on a  
23 daily basis, like tights for both, panty hose, whatever I  
24 tell you to both wear and do. You will only go back to  
25 Turkey to obtain your American visa and back to the

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1 Ukraine and then back to the USA. Do you now understand  
2 what I'm telling you? I see you really want this badly  
3 and all that I will do with you. So this is what you need  
4 to do. No more going back and forth to any country except  
5 Turkey, just for your visa, and back to New York. Do we  
6 understand each other?

7 Q All right. I'll just remind you that this is an  
8 e-mail from 4/12/2012, right?

9 A Yes.

10 Q Turn to Government's Exhibit 214.

11 MR. KABRAWALA: I'll publish this, which has  
12 already been entered into evidence as Government's  
13 Exhibit 214.

14 Q Just the top appears to be Joe Valerio forwarding it  
15 to himself; is that fair to say?

16 A Yes.

17 Q It is dated 4/12/12, at 11:02:00 p.m.?

18 A Yes.

19 Q It says, "begin forwarded message"?

20 A Yes.

21 Q And the date is the same above, correct?

22 A Yes.

23 Q And what I'll do, I'll actually just scroll down and

24 show you right here where it says -- do you see where it

25 says, Thursday, 12 April 2012 at 15:38?

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1 What is 15:38?

2 A 15:38 is 3:38 p.m.

3 Q So it's the same exact time as the e-mail that you  
4 just read, Government's Exhibit 213, right?

5 A Correct.

6 Q In fact, the entire text of Government's Exhibit 213  
7 is well contained within Government's Exhibit 214?

8 A Correct.

9 Q So it appears to be some sort of a portion of an  
10 e-mail in response?

11 A Yes.

12 Q And just the bottom of it, in Government's  
13 Exhibit 213, the last line where it says "Do we understand  
14 each other," do you see that?

15 A Yes.

16 Q I'll draw your attention to the e-mail where it says  
17 "begin forwarded message."

18 A Yes.

19 Q Who is that from?

20 A Elena Kalichenko at kalichenkoes@mail.ru.

21 Q To?

22 A To Joe Valerio at joeval5@optonline.net.

23 Q I'll read this aloud, and tell me if I get it wrong.

24 A Okay.

25 Q Yes, Joseph -- this is in capitals now -- we do

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- 1 understand each other, delivering you videos with [REDACTED]  
 2 the exact way you request, and Turkey only for the visa  
 3 purpose. I do understand...  
 4 Did I read that correctly?  
 5 **A Yes.**  
 6 **Q** This is actually still Government's Exhibit 214,  
 7 right?  
 8 **A Yes.**  
 9 **Q** Now, I'm also going to read a portion starting about  
 10 halfway down:  
 11 Joseph, could you please send me like from 75 to  
 12 \$100 on my name here to Ankara, A-N-K-A-R-A, cause I  
 13 seriously have 250 left. \$200 I will pay for the text  
 14 tom, T-O-M, and \$50 I need to pay for a taxi to get me  
 15 from the place where I stay to the airport so in Moscow.  
 16 And it goes on to say: I will use these money  
 17 to pay for taxi again to get from V-N-U-K-O-V-O airport.  
 18 This is the one I will arrive in S-L-O-B-O-D-A.  
 19 Did I read that correctly?  
 20 **A Yes, you did.**  
 21 **Q** It appears she's asking for money, right?  
 22 **A Yes.**  
 23 **Q** This is the date of April 12, 2012, as a reminder,  
 24 correct?  
 25 **A Correct.**

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- 1 **Q** By the way, where is Ankara?  
 2 **A In Turkey.**  
 3 **Q** A city in Turkey?  
 4 **A Yes.**  
 5 **Q** I will draw your attention to what has previously  
 6 been marked and admitted as Government's Exhibit 332.  
 7 I'm sorry, 322.  
 8 Do you have it?  
 9 **A Yes, I do.**  
 10 **Q** Do you remember what this is?  
 11 **A This is a chart that illustrates transactions that**  
 12 **were done through Western Union.**  
 13 MR. KABRAWALA: I'm publishing what has been  
 14 admitted into evidence as Government's Exhibit 322.  
 15 **Q** Look at the date. Do you remember what that date was  
 16 of the last e-mail where Kalichenko is asking for money,  
 17 4/12/12? Do you remember that?  
 18 **A Yes.**  
 19 **Q** What does it say happened on that date according to  
 20 Western Union records?  
 21 **A On 4/12/12, it says that Joseph Valerio from 3 High**  
 22 **Gate Drive in Smithtown, New York, sent \$100 to Ankara,**  
 23 **Turkey, to the payee Kalichenko.**  
 24 **Q** \$100 to Turkey?  
 25 **A Yes.**

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- 1 **Q** Turn to Government's Exhibit 211.  
 2 How much is being asked for?  
 3 **A 75 to \$100.**  
 4 **Q** Take a look at Government's Exhibit 215 which has  
 5 been admitted into evidence.  
 6 **A Yes.**  
 7 **Q** Are you there?  
 8 **A Yes.**  
 9 **Q** Okay.  
 10 MR. KABRAWALA: Let me publish 215.  
 11 **Q** See halfway down it says: I told you back in  
 12 Turkey...?  
 13 **A Yes.**  
 14 **Q** Read the sentence -- read where it says "I told you  
 15 back in Turkey" to "your daughter."  
 16 **A I told you back in Turkey, I need to see this**  
 17 **validation from you when you know I'm helping you and your**  
 18 **daughter...so this is what I want to see from you because**  
 19 **you are not here to show me this validation that Val,**  
 20 **V-A-L, and Julia give me in their own way. So that means**  
 21 **I need to see all I'm asking of you that I feel will**  
 22 **warrant your arrival to New York some day. Helena, get**  
 23 **over to that computer place today to send me those videos**  
 24 **on a computer format along with all those pics. I will be**  
 25 **at my home office in a day or so, so I expect to see a lot**

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- 1 **of action. Then I'll review them all, and I might**  
 2 **consider your next request and move to get you home to**  
 3 **your family. I'm be waiting to see your validation.**  
 4 **Q** This home office is being referred to in this  
 5 4/15/2012 e-mail?  
 6 **A Yes.**  
 7 **Q** Do you remember seeing a home office?  
 8 **A Yes, at 3 High Gate Drive, on the second floor.**  
 9 **Q** Is that where you found this (indicating)?  
 10 **A Yes, this is correct.**  
 11 THE COURT: What exhibit is that?  
 12 MR. KABRAWALA: I'm sorry, good point.  
 13 Government's Exhibit 400.  
 14 **A Yes.**  
 15 **Q** You found this in the home office at the defendant's  
 16 house, right?  
 17 **A That's correct.**  
 18 MR. KABRAWALA: Government's Exhibit 216,  
 19 please.  
 20 I'm going to publish it. 216.  
 21 **Q** Is it fair to say it is from joeval5@optonline.net to  
 22 kalichenkoes@mail.ru, the same month, April 16, 2012?  
 23 Subject: Forward: Flight doesn't look good for  
 24 you.  
 25 Can you just read the entire first paragraph?



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1 Do you see that?

2 **A Sure.**

3 **Helena, I looked at your videos. I'll give you**  
 4 **credit for some. Like I suspected. Why did you hurry**  
 5 **while doing them? And why the hell were the videos done**  
 6 **just in the bathroom? Whose place did you stay at? If**  
 7 **you were alone, then you would not feel the sense of**  
 8 **rushing the video and the sense to hide in the bathroom**  
 9 **while someone else is in the other room...I know you**  
 10 **tried, but you can't fool me. When is the last time you**  
 11 **had sex?**

12 **Q** Is it fair to say that the e-mail is riddled with  
 13 exclamation marks?

14 **A Yes.**

15 **Q** What does it mean when someone writes "based on your  
 16 experience," when someone writes in all capital letters?

17 MR. LATO: Objection.

18 THE COURT: Sustained.

19 **Q** Take a look at Government's Exhibit 243. This is  
 20 actually a ten-page exhibit.

21 **A Yes.**

22 **Q** Are you there?

23 **A I have it.**

24 **Q** Okay.

25 Turn to the seventh page, please.

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1 Actually, before you do that, take a look at it  
 2 and let me know whether it looks like an -- essentially an  
 3 e-mail chain between two people, whether there were  
 4 responsive messages going out.

5 **A Yes, it is a chain.**

6 **Q** Who are those two people, or 2-E-mail addresses, I  
 7 should say?

8 **A I'm sorry, I didn't hear you.**

9 **Q** That was an unclear question. I'm sorry.

10 Who are the 2-E-mail addresses -- withdrawn.

11 Who is the correspondence between, which e-mail  
 12 addresses?

13 **A Between Joseph Valerio at joeval5@optonline.net and**  
 14 **Kalichenko ES at kalichenkoes@mail.ru.**

15 **Q** Please turn to the seventh page.

16 **A Okay.**

17 **Q** I want you to read from -- see where it says -- I'm  
 18 sorry.

19 MR. KABRAWALA: I'm publishing this, 243.

20 **Q** See where it says, Tuesday, 26 June 2012, and there's  
 21 a number 23:07:14?

22 **A Yes.**

23 **Q** Appears to be 11:00 p.m., 11:07:00 p.m.?

24 **A Yes, that would be the right time.**

25 **Q** And it's Joe Valerio at joeval5@optonline.net?

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1 **A Yes.**

2 **Q** I want you to read from where it says "Helena."

3 Do you see this? The first word.

4 **A Yes.**

5 **Q** "Helena, what is the true purpose," all the way down,  
 6 five lines, to where it says, "When this is completed,  
 7 we'll talk money."

8 **A Helena, what is the true purpose of your inclination**  
 9 **to want choose solely Miami? I will do this for you by**  
 10 **pushing the dates up one week and then meet you in Miami.**  
 11 **You will get over to the UKR and get me those videos I**  
 12 **asked for, the pool changing rooms, dressing rooms, et**  
 13 **cetera, and more of you and [REDACTED]. You see this thing**  
 14 **with your daughter gives you some clout with me. So I**  
 15 **need to see this. When this is completed, we'll talk**  
 16 **money.**

17 **Q** Agent Troyd, are you aware that the defendant has a  
 18 daughter named A [REDACTED], A [REDACTED]?

19 **A Yes.**

20 **Q** I want you to just read -- I'll read it aloud.

21 No more traveling. Only to bring your daughter  
 22 back. I have included her already as a dependent and got  
 23 tax write-offs back in May. A [REDACTED] and her mom are just  
 24 here for visitation, that's it. Are you kidding, her life  
 25 in my Hamptons home, she will return back to SA after

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1 seeing her relatives?

2 Valerio, of course, lives in NYC. That's  
 3 permanent. But she travels like every two weeks for  
 4 modeling work. You may stay a very long with me in NY. I  
 5 got it all worked out...you need not ask, but listen to me  
 6 and you will be fine here with [REDACTED]

7 To answer the birthday plans, she had it as a  
 8 surprise for me, and, yes, it's a party atmosphere in  
 9 Vegas. It's a great place.

10 Be safe and keep clean.

11 Joseph.

12 Did I read that correctly?

13 **A Yes.**

14 **Q** Take a look at Government's Exhibit 219, please.

15 **A Yes.**

16 MR. KABRAWALA: I'm going to publish it.

17 Publishing 219 from joeval5@optonline.net to  
 18 kalichenkoes@mail.ru. It is dated June 27, 2012. The  
 19 subject is: Forward: Re:2:forward, your mail.

20 I'll read portions of it, and tell me if I get  
 21 it wrong.

22 I'm starting from the top here.

23 **A Okay.**

24 **Q** Let's keep your destination for Miami, and like you  
 25 said, the 26th through the 29th, any of those days, which

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1 gives me a week to get back from Vegas and then fly to  
 2 Miami to meet you. So push up the dates to arrive in the  
 3 USA. And, yes, I want you to spend two weeks with your  
 4 daughter. Take care of her, groom her, let her hair grow.  
 5 Not short like a boy. Then do the video again with  
 6 [REDACTED]. Pool dressing rooms, changing rooms and more.  
 7 Lock in your arrival time like you indicated for the 29th  
 8 of July.  
 9 Did I read that correctly except for what is  
 10 corrected?  
 11 **A Yes, that is correct.**  
 12 **Q** Okay. I'll continue reading.  
 13 I can squeeze in time with Chrissy and Natalia  
 14 and then have more time with you -- I'm sorry. Then after  
 15 you will remain in New York...keep your sweet tits close  
 16 to my mouth, and they can -- you can just fly into UKR to  
 17 get [REDACTED]  
 18 Did I read that correctly?  
 19 **A Yes.**  
 20 **Q** What is UKR?  
 21 **A The symbol for Ukraine.**  
 22 **Q** The abbreviation?  
 23 **A Yes, the abbreviation.**  
 24 **Q** So continuing on.  
 25 With your B-visa, [REDACTED] can come along with

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1 you, no problem. So begin the process, sweets, and work  
 2 on getting Anna possibly back with you or no problem at  
 3 all. We can get her here when you arrive...that's fine  
 4 with me, as I will be set then waiting for you.  
 5 Thanks for asking about A [REDACTED]. She's gorgeous,  
 6 light brownish blonde hair...very light like mine in the  
 7 summer with -- and get this -- hazel green eyes. Looks  
 8 more like Daniella, Valerio's sister. You know you have  
 9 such beauty in [REDACTED]. Like you are mine. I see and know  
 10 this as I insert my power of protection from and to God  
 11 above to watch over you, [REDACTED] and your mom.  
 12 Be safe and secure.  
 13 Did I read that correctly?  
 14 **A Yes.**  
 15 **Q** Will you turn to Government's Exhibit 243, please?  
 16 **A Yes, I have it.**  
 17 MR. KABRAWALA: I'll publish it.  
 18 **Q** Same sender as the last one now?  
 19 **A Yes.**  
 20 **Q** Same addressee. The "to" and the "from" are the  
 21 same?  
 22 **A Yes.**  
 23 **Q** When was this sent, July 5, 2012?  
 24 **A Yes.**  
 25 **Q** This was from Joe Valerio, joeval5@optonline.net,

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1 subject: Re:6:forward, 5:your mail?  
 2 **A Yes.**  
 3 **Q** Read from where it says -- from the top. Read this  
 4 paragraph, the entire paragraph.  
 5 **A Before I go, where do you want the money wired to? I**  
 6 **can do Western Union tonight from anywhere. Glad to know**  
 7 **you are back safe and soon to be home in the UKR.**  
 8 **Certainly would like to see the pics of [REDACTED] and of**  
 9 **course don't forget to take videos where from you are**  
 10 **staying: the room, place, you in the shower. Soon I may**  
 11 **devour you all to myself. Delicious.**  
 12 **Seems like all is falling into its rightful**  
 13 **order. I have a good feel. Just waiting, and I will be**  
 14 **leaving soon. Just let me know if I'm clear to wire via**  
 15 **Western Union to Istanbul.**  
 16 **Be safe. Kisses back all over. PS. Glad**  
 17 **everyone's safe.**  
 18 **Q** That's a July 5, 2012, e-mail; is that correct?  
 19 **A Yes.**  
 20 **Q** Showing you Government's Exhibit 222.  
 21 MR. KABRAWALA: Government's Exhibit 222 is in  
 22 evidence.  
 23 I will publish it.  
 24 **Q** Are you there?  
 25 **A I'm here.**

Troyd - Direct/Kabrawala

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1 **Q** This appears to be from joeval5@optonline.net to  
 2 kalichenkoes@mail.ru.  
 3 What is the date there?  
 4 **A July 6, 2012.**  
 5 **Q** How does it relate to the last e-mail?  
 6 **A The day after.**  
 7 **Q** The next day, right?  
 8 **A The next day.**  
 9 **Q** Do you want to read it?  
 10 Helena, here is the wire number, MTCN, with the  
 11 number sign 1488978622.  
 12 Be safe, Joseph.  
 13 Did I read that correctly?  
 14 **A Yes, I did.**  
 15 **Q** Can you please look at Government's Exhibit 322.  
 16 I would just keep that out.  
 17 **A Okay.**  
 18 **Q** 322 has been admitted. You might recall that this is  
 19 the Western Union summary chart.  
 20 What does it say that happened on June 6,  
 21 2012, -- I'm sorry, July 6, 2012, if anything?  
 22 **A On July 6, 2012, the summary chart indicates that**  
 23 **Joseph Valerio sent Olena Kalichenko \$200 to Ankara,**  
 24 **Turkey.**  
 25 **Q** Take a look at the MTCN number, that unique number

Troyd - Direct/Kabrawala

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- 1 that appears in Government's Exhibit 222.
- 2 **A Yes.**
- 3 **Q** And compare that number, that unique MTCN number, to
- 4 the other number for the entry for the same date, July 6,
- 5 2012.
- 6 **A Both MTCN numbers are identical.**
- 7 **Q** I missed that, I'm sorry.
- 8 **A Both MTCN numbers are identical, the one on the**
- 9 **e-mail and the one on the summary chart.**
- 10 **Q** Okay. Can you next turn to Government's Exhibit 223?
- 11 It's in evidence.
- 12 **A I have it.**
- 13 **Q** Okay?
- 14 MR. KABRAWALA: I'll publish it.
- 15 Publishing 223 in evidence.
- 16 **Q** This is from joeval5@optonline.net to
- 17 kalichenko@mail.ru.
- 18 What is the date?
- 19 **A July 12, 2012.**
- 20 **Q** And the "to" and "from" that I just read out, did I
- 21 read it correctly?
- 22 **A Yes.**
- 23 **Q** What is the subject?
- 24 **A "Lower your tone with me."**
- 25 **Q** Read the entire e-mail.

Troyd - Direct/Kabrawala

519

- 1 **A Before we move further, we have you decided for your**
- 2 **mother to stay while you have [REDACTED] and do the videos**
- 3 **with her along with the dressing rooms, showers?**
- 4 **You also remember there are still no guarantees**
- 5 **you will get your visa...but you will work for these**
- 6 **videos when you are in Kiev.**
- 7 **Q** July 12, 2012, 10:14 a.m., is the time of this sent
- 8 e-mail, correct?
- 9 **A That's correct.**
- 10 **Q** July 12th.
- 11 Now, take a look at Government's Exhibit 225.
- 12 That's in evidence and has been admitted.
- 13 **A Okay, I have it.**
- 14 **Q** You are quicker than me. My computer is slow.
- 15 MR. KABRAWALA: I'm going to publish the
- 16 document so the jury sees it.
- 17 **Q** It is a one-page exhibit; is that correct?
- 18 **A Yes.**
- 19 **Q** July 12, 2012, the same date as the last e-mail?
- 20 **A 3:38 p.m.**
- 21 **Q** Who is it from and to whom?
- 22 **A From joeval5@optonline.net, and it is**
- 23 **kalichenko@mail.ru.**
- 24 **Q** The subject line, please?
- 25 **A Subject is: Forward: Perfect dear.**

Troyd - Direct/Kabrawala

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- 1 **Q** Scroll down about eight lines down the page.
- 2 Why don't you read starting from -- I'll read
- 3 it, and you let me know if I get it wrong.
- 4 **A Okay. Where are we starting?**
- 5 **Q** I'll start right here where it starts "I closed on a
- 6 business..."
- 7 Do you see that?
- 8 **A Yes.**
- 9 **Q** I closed on a business deal like I had mentioned with
- 10 my cousins in Brooklyn, where now I can leverage a
- 11 warehouse deeded to me and my family for future
- 12 investments. Having connections and property from
- 13 Manhattan, Brooklyn, just recently Nassau County, homes
- 14 and buildings, Suffolk County, where the Smithtown and
- 15 Hamptons homes are, along with the co-op jointly owned,
- 16 then time share out east in Montauk. It's all of New
- 17 York.
- 18 Did I read that correctly?
- 19 **A Yes.**
- 20 **Q** Except for upstate, which is the cheapest, along with
- 21 Queens, Staten Island, which is less desirable. I'm proud
- 22 to see how hard you are working with the translations.
- 23 It's quite an accomplishment.
- 24 Did I read that correctly?
- 25 **A Yes.**

Troyd - Direct/Kabrawala

521

- 1 **Q** Suffolk County, Nassau County, Manhattan, Brooklyn,
- 2 all are within the state of New York. That's obvious.
- 3 **A Yes.**
- 4 **Q** All essentially Downstate?
- 5 **A Yes.**
- 6 **Q** Not in Ukraine?
- 7 **A I'm sorry?**
- 8 **Q** Not in the Ukraine?
- 9 **A No, of course not. No.**
- 10 **Q** I'm going to continue to read. I'm going to jump
- 11 down here where it says "arrive first."
- 12 This is at the right side of the page.
- 13 **A Yes, I see it.**
- 14 **Q** Arrive first safely, and I'll pray that you do. Get
- 15 settled in Kiev. We'll set your mother up so she can
- 16 relax, as do all those delicious -- I'm sorry, I lost my
- 17 place.
- 18 Would you mind reading where I lost my place --
- 19 I'm sorry.
- 20 Relax as well, and you get together with our
- 21 sweet little joy...so sweet. I bet you can't wait to see
- 22 her.
- 23 Read to the end, please.
- 24 **A Sure.**
- 25 **Do all those delicious things on video with**

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1 [REDACTED], so sweet. I can taste your nectar dripping wet on  
 2 my tongue, umm, da. Yes, of course that camera is  
 3 perfect. The one the agent used for Yaro, Y-A-R-O. It  
 4 can easily be sent to my e-mail address after filming.  
 5 Ask that agent all specifics okay, babe? We are set and  
 6 hopefully forever. Your interview date, July 25th.  
 7 And I have a lawyer amongst others for the  
 8 adoption process, but you can still bring [REDACTED] in the  
 9 USA come October. November, correct. The rest is  
 10 understood. Saturday will be in your departure from  
 11 Turkey. Send me the flight details so I know when you  
 12 arrive safely. I have kiss you so passionately. So  
 13 dripping wet.  
 14 Q That's fine. Thanks.  
 15 Take a look at Government's Exhibit 226, the  
 16 very next one. It has been admitted into evidence, and  
 17 I'll publish it now.  
 18 A I have it.  
 19 Q It's safe to say it is from joeval5@optonline.net to  
 20 kalichenko@mail.ru?  
 21 A Yes.  
 22 Q And it's a few days, six days, later, approximately,  
 23 from the last e-mail, July 18, 2012?  
 24 A Yes, at 11:51 p.m.  
 25 Q I'll read starting the last line -- I'll just read

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1 it, starting the last line of the first paragraph.  
 2 A Okay.  
 3 Q Here is the money that I promised you and [REDACTED]  
 4 MTCN 6554625309.  
 5 Off to a cabaret show now. Both of you be safe  
 6 and enjoy your time together. Joseph.  
 7 A Yes, that is correct.  
 8 Q Can you turn to Government's Exhibit 322, please?  
 9 A Yes, I have it here.  
 10 Q You have it ready, but I don't.  
 11 MR. KABRAWALA: I'll publish it again, 322.  
 12 Q According to Government's Exhibit 322, did anything  
 13 happen that day, July 18th, the date of that e-mail?  
 14 A Yes.  
 15 Q What happened?  
 16 A On that date Joseph Valerio, at 3 High Gate Drive in  
 17 Smithtown, New York, sent \$600 to Olena Kalichenko in  
 18 Kiev, Ukraine.  
 19 Q Take a look at that tracking confirmation number.  
 20 A Yes.  
 21 Q Compare it to the MTCN number for Government's  
 22 Exhibit 226, that e-mail you read from.  
 23 A Yes.  
 24 Q Is there any difference in the numbers?  
 25 A No. The MTCN number in 226, which is the e-mail, is

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1 identical to the MTCN number for the same date in the  
 2 summary chart from Western Union.  
 3 Q Going back to an e-mail we've seen before,  
 4 Government's Exhibit 275. Take a look at that.  
 5 That has already been admitted.  
 6 A Okay, I have it.  
 7 Q This is a six-page exhibit?  
 8 A Yes.  
 9 Q Turn to the fourth page, please, the very bottom.  
 10 Actually, look at the fifth page.  
 11 Is it from joeval5@optonline.net?  
 12 MR. LAPINTA: I'm sorry, it is the fifth page.  
 13 MR. KABRAWALA: I'm sorry.  
 14 A At the bottom of the fourth page, it indicates the  
 15 text on the next page will be from joeval5@optonline.net.  
 16 Q Is it fair to say it's the e-mail chain we've been  
 17 talking about?  
 18 A Yes.  
 19 Q Does this e-mail look familiar to you, the text of  
 20 it?  
 21 A Yes.  
 22 Q How so, sir?  
 23 A This is the e-mail that I read, or a section of the  
 24 e-mail that I read, to Mr. Valerio at the January 28th  
 25 interview.

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1 (Whereupon, the record was read back by the  
 2 reporter.)  
 3 Q So you read this.  
 4 This is from Cablevision, right?  
 5 A Yes.  
 6 Q And the e-mail that you read to Mr. Valerio on  
 7 January 28, 2014, that was obtained -- how was it  
 8 obtained?  
 9 A I received that e-mail from Special Agent Angelini,  
 10 who obtained that e-mail from Olena Kalichenko.  
 11 Q So from both on the Cablevision --  
 12 A Yes, both. Both identical.  
 13 Q I'll have you read this e-mail again, but I just want  
 14 to draw your attention to -- I'll just publish it.  
 15 I'm publishing 205, page 5, the middle  
 16 paragraph.  
 17 Read it to yourself.  
 18 Does that appear to be what you read to and had  
 19 the defendant read while you were speaking with him at his  
 20 house?  
 21 A Yes.  
 22 Q What did the defendant say about this e-mail?  
 23 A That he did in fact send this e-mail to Olena  
 24 Kalichenko.  
 25 Q Is it fair to say in this e-mail he's telling

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1 Ms. Kalichenko to -- withdrawn.  
 2 Is it fair to say that he's telling Kalichenko  
 3 to essentially "follow the script"?  
 4 **A Yes.**  
 5 **Q** Is it also fair to say he describes what he wants  
 6 Kalichenko to do with the child?  
 7 **A Yes. He's directing the direction of the**  
 8 **pornography.**  
 9 **Q** Is it also fair to say that he's telling Kalichenko  
 10 where the child should place toys?  
 11 **A Yes.**  
 12 **Q** Turn to the third page of this exhibit, page 3 of the  
 13 same exhibit, Government's Exhibit 205.  
 14 **A Okay.**  
 15 **Q** In this e-mail chain, is it fair to say that we're  
 16 now at a sent e-mail of July 21, 2012, 23:58:16? That is  
 17 approximately 11:58 at night?  
 18 **A That's correct.**  
 19 **Q** From joeval5@optonline.net?  
 20 **A Yes.**  
 21 **Q** I'll read it, and tell me if I get it wrong.  
 22 Helena...yes, we are back safely and stood at  
 23 the apartment in NYC last night. I'm back home today  
 24 resting up. I got the videos of you and [REDACTED]. Of  
 25 course they are always a treat to receive and enjoy to see

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1 you two both together. That was very nice. You can send  
 2 the rest to my e-mail, the pool, shower shots and changing  
 3 rooms, et cetera. My e-mail, as you know by now, is the  
 4 best way to send all the videos...I guess you took a  
 5 shortcut this time on what you needed to do.  
 6 I'll scroll down the page.  
 7 MR. KABRAWALA: For the record, I'm circling the  
 8 word "your" here to indicate where I am.  
 9 **Q** Your now tell me about money you need by Monday to  
 10 show in your bank account. Just sent you \$600, plus I had  
 11 to reserve for your hotel in Miami and asked you what you  
 12 needed to cap your reserve. And no answer. You continue  
 13 to play by your own rules, and I'm not liking it, Helena.  
 14 You have spent six days in Kiev, a very big city, with a  
 15 rented apartment with just you and your daughter, and  
 16 that's all you produced? That's not acceptable.  
 17 Did I read that correctly?  
 18 **A Yes, I did.**  
 19 THE COURT: We'll take the afternoon break.  
 20 Don't discuss the case.  
 21 (Whereupon, at this time the jury exits the  
 22 courtroom.)  
 23 THE COURT: How much more do you have on direct?  
 24 MR. KABRAWALA: Judge, I'm sorry?  
 25 THE COURT: How much more do you have?

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1 MR. KABRAWALA: A half hour.  
 2 THE COURT: Okay.  
 3 (Whereupon, a recess was taken.)  
 4 THE COURT: Be seated.  
 5 MR. LAPINTA: Real quick before the jury comes  
 6 out.  
 7 I've discussed the schedule on the remainder of  
 8 the case with counsel. We'd like to propose a scheduling  
 9 situation with you.  
 10 Do you mind if we could call or start our case  
 11 on Monday, because we have an expert coming from New York  
 12 City, and he has to work his calendar to be here tomorrow  
 13 afternoon.  
 14 THE COURT: That's fine.  
 15 MR. LAPINTA: They are not even sure they'll be  
 16 finished tomorrow afternoon.  
 17 THE COURT: That's fine. We'll just end early.  
 18 MR. LAPINTA: Thank you.  
 19 THE COURT: Okay.  
 20 (Whereupon, the jury at this time enters the  
 21 courtroom.)  
 22 THE COURT: Go ahead.  
 23 BY MR. KABRAWALA:  
 24 **Q** Before the break we've been discussing Government's  
 25 Exhibit 205. I'll now publish the first page of it, of

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1 this six-page exhibit.  
 2 **A Okay.**  
 3 **Q** Does this look familiar to you, this exhibit?  
 4 **A Yes.**  
 5 **Q** How so?  
 6 This is the e-mail of 7/22/12?  
 7 **A This is one of the e-mails I provided to Mr. Valerio**  
 8 **on January 28th which we read.**  
 9 **Q** And he sent it?  
 10 **A Yes.**  
 11 **Q** I'll read portions of it, and tell me if I get it  
 12 wrong.  
 13 Again, for the record, it is July 22nd, 2012,  
 14 between Joe Valerio and Kalichenko.  
 15 The first paragraph is as follows: First off,  
 16 my mistake above in the subject space. It's Sveta's  
 17 information I needed, not [REDACTED] Yes, of course I want  
 18 to stay in pursuit of Sveta. And why not?  
 19 I'll scroll down a bit.  
 20 Same paragraph.  
 21 The main reason I'm giving you a chance to come  
 22 and build a life here because you and [REDACTED] offer me  
 23 "something different" that my other girls don't have or  
 24 can't supply to me now. So it's [REDACTED] and you that fit  
 25 that equation. Got it?



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- 1 Now I'm going to scroll down. I'll read the  
2 last paragraph right before it says "speak to you  
3 tomorrow, kisses," the last few lines which I'll not read.  
4 Can you see that?  
5 **A Where is that?**  
6 **Q** The paragraph that starts at 15: Interested?  
7 **A Yes.**  
8 **Q** Do you see "just wearing a top skirt and just panty  
9 hose," and it continues on?  
10 Is it fair to say -- withdrawn.  
11 Is that portion of the e-mail -- withdrawn.  
12 Is a portion of that remainder of that e-mail  
13 what you read to the defendant aloud on January 28, 2014?  
14 **A Yes, it is.**  
15 **Q** And --  
16 **A Yes, it is.**  
17 **Q** Is it fair to say that it describes -- withdrawn.  
18 Is it fair to say that it describes what the  
19 defendant wants to see on videos involving [REDACTED]  
20 MR. LATO: Objection.  
21 THE COURT: Sustained.  
22 **Q** Read it aloud.  
23 So this is the text you read to the defendant  
24 and he admitted sending?  
25 **A That's correct.**

Troyd - Direct/Kabrawala

531

- 1 **Q** Oh, by the way, where does this e-mail come from?  
2 **A The one in my hand or the one I read from?**  
3 **Q** The one in your hand.  
4 **A This came from Cablevision, and it was on the search**  
5 **warrant.**  
6 MR. KABRAWALA: Thanks.  
7 **Q** Please turn to Government's Exhibit 229.  
8 **A Yes, I'm there.**  
9 MR. KABRAWALA: I'm publishing it.  
10 **Q** 229 is from joeval5@optonline.net to Kalichenko,  
11 dated September 6, 2012, subject: Forward, re: Forward  
12 to visa.  
13 Why don't you read from -- without reading what  
14 the MPCN number is, read above it.  
15 **A Sounds good. Just give me all the flight details to**  
16 **follow through with so I know to check that you're safe.**  
17 **Saturday, when you are settled in the city, send me the**  
18 **usual videos of you and sweet [REDACTED], who will be so glad**  
19 **to see you and explore your sweet tits and pussy by**  
20 **putting a nice big toy in that sweet pussy of yours for**  
21 **our [REDACTED] to pull out of your dripping wet pussy.**  
22 **I want to see this and the blush of relief on**  
23 **your face with a wet cum-dripping toy. Speaking of which**  
24 **I got a vibrating dong that I insert over my cock. It's**  
25 **an African Sicilian --**

Troyd - Direct/Kabrawala

532

- 1 **Q** It's okay.  
2 There is an MTCN there, right?  
3 **A Yes.**  
4 **Q** In the e-mail -- I think you just read it -- it says:  
5 Send me the usual videos of you and sweet [REDACTED]. Right?  
6 **A Yes.**  
7 **Q** The usual videos.  
8 And the MTCN number for -- it's for \$1,000?  
9 **A I'm sorry?**  
10 **Q** There is an MTCN. What is that, to your  
11 recollection?  
12 **A The tracking number used by Western Union.**  
13 **Q** For \$1,000, right?  
14 **A Yes, correct.**  
15 **Q** September 6, 2012, e-mail, right?  
16 **A Yes.**  
17 **Q** Turn to the summary exhibit, Western Union summary  
18 chart, 322, please.  
19 **A I have it.**  
20 **Q** September 6th, same MTCN number as the last e-mail?  
21 **A Yes, it is.**  
22 **Q** Who is it from and to?  
23 **A Joseph Valerio in Smithtown, being sent to Olena**  
24 **Kalichenko in Ankara, Turkey, for 1,000 US dollars.**  
25 **Q** Just like in the e-mail, right?

Troyd - Direct/Kabrawala

533

- 1 **A That's correct.**  
2 **Q** Government's Exhibit 230, please. It is in evidence  
3 like the last e-mail. 230.  
4 **A 230?**  
5 **Q** Yes.  
6 MR. KABRAWALA: I'm going publish it.  
7 I'm publishing 230.  
8 **Q** It's an e-mail from joeval5@optonline.net to  
9 kalichenkoes@mail.ru, sent September 19, 2012, at  
10 12:07 a.m.  
11 Is that correct?  
12 **A Yes, that is correct.**  
13 **Q** I'm just going to read aloud the first couple of  
14 sentences. And I'm right here, sir.  
15 Hello, there, Helena, how are you doing? I hope  
16 [REDACTED] is doing much better now. I knew somehow she just  
17 had a cold. I'm sure it is just the change of temp,  
18 T-E-M-P.  
19 Did I read that correctly?  
20 **A Yes, you did.**  
21 **Q** Now I'll read from further on down, and circling it  
22 on the screen.  
23 Do you see that?  
24 **A Yes.**  
25 **Q** I need to see results and when your daughter is fine

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534

1 and you're prepared. I need to see videos e-mailed to me  
2 of you and [REDACTED] I honestly have been in bed  
3 all day with Val, et cetera.

4 Be safe, regards, Joseph.

5 Did I read that correctly?

6 **A Yes, you did.**

7 **Q** One more e-mail. 206.

8 **A I have it.**

9 MR. KABRAWALA: I'm publishing 206.

10 **Q** This is from joeval5@optonline.net to  
11 kalichenkoes@mail.ru, sent 9/27/22 at 11:52 a.m.

12 Why don't you just read the first paragraph of  
13 that e-mail.

14 **A Hey, you listen now or this will be the last time**  
15 **ever. Why the fuck are you writing mails at 9:30 p.m.**  
16 **when your daughter is supposed to be sick? Are you**  
17 **starting to be that sneaky bitch again? If so, I will**  
18 **drop you on your ass. Better fucking explain.**

19 **First off, I just gave you \$1200 for your**  
20 **family, and you are going to fucking work for it. Not sit**  
21 **anywhere all fucking day sending out e-mails. I'm asking**  
22 **you now, what the fuck do you do all day and you have**  
23 **produced nothing for me.**

24 **Q** Okay. Continue to read the next paragraph until you  
25 get to "I'll drop you on your ass" with a triple

Troyd - Direct/Lato

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1 exclamation point.

2 **A I wanted an explanation for all of this now. Each**  
3 **morning and night you will send me a cell phone video of**  
4 **you waking up with your daughter with your tits in her**  
5 **mouth before you go to sleep and wake up. If I don't see**  
6 **this each day, I will drop you on your ass.**

7 **Q** Okay.

8 MR. KABRAWALA: Nothing further, your Honor.

9 THE COURT: Cross-examination?

10 MR. LATO: Yes.

11 Let me confer with co-counsel, please.

12 (Counsel confer.)

13 MR. LATO: Just a moment to get some exhibits,  
14 Judge, and it will save some time.

15 THE COURT: Sure.

16 MR. LATO: Judge, may I just have a defendant's  
17 exhibit sticker? I just need one.

18 Thank you.

19 CROSS-EXAMINATION

20 BY MR. LATO:

21 **Q** Special Agent Troyd, good afternoon.

22 **A Good afternoon.**

23 THE COURT: Please pull the microphone over.

24 MR. LATO: Yes, your Honor.

25 **Q** Would it be fair to say you and other law enforcement

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1 officers executed a search warrant at Mr. Valerio's house  
2 on January 28th of this year?

3 **A Yes, that is correct.**

4 **Q** And is it true that approximately 12 law enforcement  
5 officers, including yourself, were there to execute the  
6 warrant?

7 **A Yes, that's correct, sir.**

8 **Q** Is it also fair to say that for a variety of reasons  
9 the law enforcement officers were wearing raid jackets  
10 that said "FBI"?

11 **A Yes.**

12 **Q** Is it also fair to say that you began the execution  
13 of the warrant at or shortly after 6:00 a.m.?

14 **A That's correct.**

15 **Q** Is one of the reasons why the warrant was executed so  
16 early is to have the element of surprise?

17 **A For safety purposes, yes.**

18 **Q** Did any of the officers or agents take pictures  
19 inside the house or during the execution of the warrant?

20 **A Yes.**

21 **Q** Do you know who that person or persons were?

22 **A Yes, I do.**

23 **Q** Who was it?

24 **A That would be Investigator George Davis, who is a**  
25 **task force officer from the Nassau County Sheriff's**

Troyd - Direct/Lato

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1 **Department. And I believe the log was maintained by**  
2 **Special Agent Jim Lopez of the FBI.**

3 **Q** Was this the SLR camera that took still photos?

4 **A I'm not sure what you refer to when you say "SLR."**  
5 **I'm not photography trained or anything. But it was a**  
6 **still photo digital camera.**

7 **Q** So it would be fair to say on January 28th, the FBI  
8 had in its possession at least one camera?

9 **A Yes.**

10 **Q** Does the FBI, as far as you know, as early as  
11 January 28th of this year, also have audio recording  
12 devices?

13 **A Yes.**

14 **Q** As far as you know, on January 28th of this year did  
15 the FBI also have access to camcorders to use if  
16 necessary?

17 **A Yes, we do.**

18 **Q** Now, is it fair to say that when you and the other  
19 officers first entered the house you did what is called a  
20 protected sweep?

21 **A Yes, that's correct.**

22 **Q** During this protected sweep, were the occupants of  
23 the house put in certain areas?

24 **A Yes.**

25 **Q** And is it fair to say that one of the first things

Troyd - Direct/Lato

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- 1 that the officers did was to separate Mr. Valerio from  
 2 Jarmila?  
 3 **A Yes. I wouldn't say that we separated them, because**  
 4 **they were separated when we entered the house, but we had**  
 5 **Mr. Jarmila downstairs in what I would say was the family**  
 6 **room, because there was a couch there that was**  
 7 **comfortable. And we left the supervisor of the squad,**  
 8 **Dawn Smallwood.**  
 9 **Q** Is it fair to say that during the execution of the  
 10 warrant, Jarmila and Mr. Valerio were kept apart?  
 11 **A Yes, they were.**  
 12 **Q** Now, is it fair to say at some point you spoke to  
 13 Mr. Valerio?  
 14 **A Yes, I did.**  
 15 **Q** Would it be fair to say that occurred in the dining  
 16 room of his residence?  
 17 **A Yes, it did.**  
 18 **MR. LATO:** May I just have Exhibit 302 up on the  
 19 screen, please.  
 20 **Q** Now, on the screen is Exhibit 302.  
 21 Do you see that, sir?  
 22 **A Yes, I do.**  
 23 **Q** And there's a table depicted in this picture,  
 24 correct?  
 25 **A Yes, there is.**

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- 1 **Q** And it was at this table or around this table, I  
 2 should say, that the interview occurred, correct?  
 3 **A That is correct, sir.**  
 4 **Q** It would be fair to say, Special Agent Troyd, as you  
 5 look at the picture, you were at the far end to the right?  
 6 **A Well, I don't know what you mean by "far end." I was**  
 7 **on the far side of the table to the right where the jacket**  
 8 **is on the chair.**  
 9 **Q** Would it be fair to say that Detective Forrestal was  
 10 at the near side? Correct?  
 11 **A Correct. In the chair that has the jacket on it.**  
 12 **Q** Is it also fair to say Special Agent Messineo was  
 13 seated next to Detective Forrestal to his left?  
 14 **A That's correct.**  
 15 **Q** It would be fair to say that Detective Badalucco was  
 16 standing next to Detective Forrestal's right?  
 17 **A No, he was standing to the left of Agent Forrestal,**  
 18 **closest to us.**  
 19 **Q** It's fair to say in the middle between you and  
 20 Forrestal was Mr. Valerio, correct?  
 21 **A Yes, sitting at the table to the right of Detective**  
 22 **Forrestal and to my left.**  
 23 **Q** So is it fair to say that from Mr. Valerio's vantage  
 24 point there were detectives and agents to the left and an  
 25 agent to the right and he was stuck in the middle?

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- 1 **A No, I don't believe he felt he was stuck in the**  
 2 **middle.**  
 3 **Q** Was he in the middle, with an officer to the left and  
 4 an officer to the right? Yes or no?  
 5 **A He wasn't surrounded.**  
 6 **Q** I didn't ask you that.  
 7 **A But --**  
 8 **Q** Sir, it's a simple question. Are there officers to  
 9 the left of him?  
 10 **A Yes.**  
 11 **Q** Were you to his right?  
 12 **A Yes, I was, sir.**  
 13 **Q** Now at some point you administered Miranda warnings  
 14 or advice of rights to Mr. Valerio?  
 15 **A Yes.**  
 16 **Q** Is it fair to say it occurred at 7:55 a.m.?  
 17 **A Yes, that's correct.**  
 18 **Q** Approximately one hour and 55 minutes after the  
 19 search began; is that fair to say?  
 20 **A Yes, that is correct.**  
 21 **Q** Now, do you remember at some point subsequent to  
 22 Mr. Valerio's arrest, you and Agent Messineo arrested  
 23 Kalichenko?  
 24 **A Yes.**  
 25 **Q** When she was arrested, you brought her back to the

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- 1 FBI offices in Melville, correct?  
 2 **A Yes, that's correct.**  
 3 **Q** And you interviewed her, correct?  
 4 **A Yes.**  
 5 **Q** And that interview was both videotaped and audio  
 6 recorded?  
 7 **A Yes, it was.**  
 8 **Q** In the hour and 55 minutes from the time you entered  
 9 the house until the time you read the advice of rights,  
 10 did you audio record anything that happened between law  
 11 enforcement and Mr. Valerio?  
 12 **A No.**  
 13 **Q** Did you video record anything that transpired in that  
 14 hour and 55 minutes?  
 15 **A No.**  
 16 **Q** Your interview of Mr. Valerio, was any of that  
 17 recorded, audio or video?  
 18 **A No, sir.**  
 19 **Q** Is it fair to say that on direct examination earlier  
 20 today Mr. Valerio told you that he directed Ms. Kalichenko  
 21 to provide child pornography?  
 22 **A Yes.**  
 23 **Q** The words "child pornography," are those yours words  
 24 or his words?  
 25 **A I would say those were my words, my interpretation of**

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- 1 **what he was saying.**
- 2 **Q** Do you remember showing him a snippet of a video
- 3 during the interview?
- 4 **A Yes, I did.**
- 5 **Q** Would it be fair to say that during the snippet, the
- 6 child is dressed?
- 7 **A Half dressed.**
- 8 **Q** Is it fair to say that Ms. Kalichenko is naked or
- 9 mostly naked?
- 10 **A She was wearing panty hose.**
- 11 **Q** Is it fair to say that snippet was not child
- 12 pornography?
- 13 **A That snippet did not display any sexually explicit**
- 14 **material that was on the rest of the video.**
- 15 **Q** But Mr. Valerio, as far as you know, did not see the
- 16 rest of that video in your presence?
- 17 **A No, not in my presence, sir.**
- 18 **Q** So it would be fair to say what you showed
- 19 Mr. Valerio was not child pornography, the portion you
- 20 showed him?
- 21 **A The portion I showed was not.**
- 22 **Q** At any time that you were interviewing Mr. Valerio,
- 23 did you slam your hand on the table?
- 24 **A No, sir.**
- 25 **Q** Did you point a finger at him?

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- 1 **A No, sir.**
- 2 **Q** Were you still wearing a raid jacket?
- 3 **A No, sir.**
- 4 **Q** What about the other officers around the table, the
- 5 other four? Were they jacketed or not jacketed?
- 6 **A I don't believe that Agent Messineo or Detective**
- 7 **Forrestal were wearing a raid jacket. I don't recall**
- 8 **whether or not Detective Badalucco had removed his raid**
- 9 **jacket during the interview.**
- 10 **Q** Were you wearing a firearm that day?
- 11 **A Yes, I was.**
- 12 **Q** Was it a 40-caliber?
- 13 **A Yes, it is.**
- 14 **Q** Was it visible to Mr. Valerio?
- 15 **A No, it was not.**
- 16 **Q** Do you know whether the other officers around that
- 17 table were carrying firearms?
- 18 **A Yes, they were.**
- 19 **Q** Do you know whether their firearms were visible at
- 20 any time during the interview?
- 21 **A I don't believe they were, but I can't say for sure,**
- 22 **sir.**
- 23 **Q** That is because you weren't looking directly at them
- 24 the whole time; is that correct?
- 25 **A Correct, I was not watching the other officers the**

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- 1 **whole time.**
- 2 **Q** It's also fair to say that the table separated you
- 3 from the other officers?
- 4 **A Yes, it did.**
- 5 **Q** Now, at some point after executing the search
- 6 warrant, conducting the interview, did you memorialize in
- 7 writing the substance of what happened at the house?
- 8 **A Yes, I did.**
- 9 **Q** And is it fair to say that you typed what is known --
- 10 or had someone type a FBI 302?
- 11 **A Yes.**
- 12 **Q** And a FBI 302 is just a form that memorializes what
- 13 an agent did that day, correct?
- 14 **A That's correct.**
- 15 **Q** Now, sir, did you have any handwritten notes to work
- 16 off of when that was prepared, the typewritten version?
- 17 **A No.**
- 18 **Q** Do you remember the time lapse between your interview
- 19 of Mr. Valerio and your dictation or typing of the 302?
- 20 **A Not off the top of my head, no.**
- 21 **Q** Was it the same day?
- 22 **A Most likely not.**
- 23 **Q** If you looked at your FBI 302, would it refresh your
- 24 recollection?
- 25 **A Yes, it would.**

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- 1 MR. LATO: One moment, please, your Honor.
- 2 I apologize, your Honor.
- 3 **Q** (Handing.)
- 4 Showing you Government's Exhibit 3500 ST-4 for
- 5 identification. Please look at that and see if it
- 6 refreshes your recollection when you dictated or typed the
- 7 report.
- 8 **A It says that it was drafted --**
- 9 **Q** Sir, does it refresh your recollection?
- 10 **A Yes, it does.**
- 11 **Q** Please put it down, sir.
- 12 Is it fair to say that it was three days later
- 13 that you either dictated or typed this report?
- 14 **A It was three days later that I typed this report.**
- 15 **Q** Is it fair to say that you prepared this report based
- 16 solely on memory of events three days earlier?
- 17 **A Yes.**
- 18 MR. LATO: May I have it back, sir?
- 19 THE WITNESS: Yes.
- 20 MR. LATO: Thank you.
- 21 I apologize.
- 22 **Q** Do you recall testifying on direct examination that
- 23 you showed Mr. Valerio one or more e-mails during your
- 24 interview of him?
- 25 **A Did you say one or more e-mails?**

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- 1 Q Was it one e-mail?
- 2 A **No, I showed him two e-mails at the interview.**
- 3 Q Right. Did he read both of them?
- 4 A **Yes, he did.**
- 5 Q Did he read them to himself or out loud?
- 6 A **He read them to himself.**
- 7 Q Do you remember how long it took him to read them to
- 8 himself?
- 9 A **Just a couple of minutes.**
- 10 Q Is the amount of time it took him to read it in your
- 11 FBI 302?
- 12 A **No.**
- 13 Q So is it fair to say you are basing your recollection
- 14 solely -- I mean without notes?
- 15 A **Yes.**
- 16 Q So as you sit here today in November and you recall
- 17 that back in January, it was a couple of minutes?
- 18 A **Yes.**
- 19 Q Do you know whether he read the entire e-mail of each
- 20 of those two e-mails?
- 21 A **I believe he did, but I can't prove that.**
- 22 Q Did you ask him: Have you read the entirety of each
- 23 of those e-mails?
- 24 A **No.**
- 25 Q Do you know whether he was -- well, did he appear

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- 1 nervous when he was reading them?
- 2 A **No, not really.**
- 3 Q When you say "not really" --
- 4 A **I would say he was not nervous.**
- 5 MR. LATO: May I have Exhibit 305, please.
- 6 MR. BODE: It's right in front of you.
- 7 MR. LATO: I'm sorry, you're right.
- 8 Q I have Exhibit 305 up on the screen.
- 9 Do you see that, sir?
- 10 A **Yes.**
- 11 Q Would it be fair to say what is depicted, 305, are
- 12 some items that you saw on January 28th of this year?
- 13 A **Yes.**
- 14 Q Is it fair to say in this photograph, 305, you can
- 15 see a desktop tower and a monitor and what appears to be a
- 16 home office?
- 17 A **Yes.**
- 18 Q Do you see in this photo whether there was any child
- 19 porn on the walls or on the desk?
- 20 A **No, I do not.**
- 21 Q Based upon your recollection, was there any child
- 22 porn, photographs, out in the open for a person walking in
- 23 to see in that office?
- 24 A **No.**
- 25 Q Did you or anyone else from the FBI take fingerprints

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- 1 of anything in that office?
- 2 A **No.**
- 3 Q Did you or anyone else from the FBI or the Suffolk
- 4 County police take fingerprints of anything in that house
- 5 on that day?
- 6 A **No.**
- 7 Q Was there any DNA testing done in this case?
- 8 A **I took a DNA swab from Mr. Valerio at the time of his**
- 9 **arrest.**
- 10 Q Did you match his DNA or did anyone else match his
- 11 DNA to any other piece of evidence in this case?
- 12 A **I have not been advised of that.**
- 13 Q I want to show you Defendant's Exhibit A for
- 14 identification.
- 15 MR. BODE: Do you have a copy?
- 16 Q Agent Troyd, I'll show it to your colleagues because
- 17 maybe they have a color photograph. So if I can have it
- 18 back for a moment, sir.
- 19 A **Certainly.**
- 20 Q I'm referring Defendant's Exhibit A for
- 21 identification to you, sir.
- 22 A **Yes.**
- 23 Q Let me know when you've had enough time to look at
- 24 it.
- 25 A **Okay.**

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- 1 Q Do you recognize what is depicted in Defendant's
- 2 Exhibit A?
- 3 A **Yes.**
- 4 Q Is it fair to say what is depicted in Defendant's
- 5 Exhibit A -- let me withdraw that.
- 6 Is Defendant's Exhibit A for identification a
- 7 photograph that was taken during the execution of the
- 8 search warrant on January 28th?
- 9 A **Yes, I believe it was.**
- 10 MR. LATO: Your Honor, I offer it as Defendant's
- 11 Exhibit A.
- 12 MR. KABRAWALA: No objection.
- 13 THE COURT: Defendant's Exhibit A is admitted.
- 14 (Whereupon, Defendant's Exhibit A was received
- 15 in evidence.)
- 16 BY MR. LATO:
- 17 Q Now, Agent Troyd, do you recognize the general area
- 18 in the house depicted in this photograph?
- 19 A **Yes. I believe this is the second-floor office.**
- 20 Q Is this the same office that was in a previous
- 21 photograph showing the computer and the monitor, 305?
- 22 A **Yes.**
- 23 Q Is it fair to say what is depicted in Defendant's
- 24 Exhibit A are papers and other objects?
- 25 A **Yes.**



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- 1 Q Do you see in Defendant's Exhibit A what appears to  
2 be either a user name or a password?  
3 A I see something that says "password." It says  
4 "pass," and then it is illegible after that.  
5 Q Is it fair to say that when the FBI went through the  
6 house, they made it a point to photograph the things that  
7 were relevant to the investigation?  
8 A Yes.  
9 Q Is it fair to say that at least what is clear in this  
10 photo is the user name shows Joeval?  
11 A Yes.  
12 Q Do you know whether this piece of paper with  
13 Mr. Valerio's user name is depicted in the photograph or  
14 whether it was placed there for photographing by an agent?  
15 A I believe it was there when it was photographed.  
16 Q Is it fair to say that the object containing the user  
17 name was in open view to a person walking into the room?  
18 A Yes.  
19 Q May I have that back, sir?  
20 A Sure.  
21 Q Now, can you see, Special Agent Troyd -- if you look  
22 at the screen, if you can just point out to the jury where  
23 the user name is depicted, for their benefit.  
24 A In the center of the screen there is some written  
25 notes. To the left, PAL 2013 sticker.

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- 1 To the left of that sticker it appears that says  
2 Joe Val 66, and something below them that says "upper" and  
3 then "lower" on the pad.  
4 Q Special Agent Troyd, did the FBI recover from some  
5 portion of the house a video or still photographs of  
6 Mr. Valerio's [REDACTED], [REDACTED]  
7 A Yes.  
8 Q Did those pictures where -- the stills or videos come  
9 off a computer?  
10 A No.  
11 Q Special Agent Troyd, did you arrest Mr. Valerio a  
12 second time?  
13 A Yes, I did.  
14 Q Was that on February 24th of this year?  
15 A Yes, it was.  
16 Q Did you once again read him an advice of rights form?  
17 A Yes, I did.  
18 Q I'm putting up on the screen Government's  
19 Exhibit 308.  
20 Is that the advice of rights form you read to  
21 him?  
22 A Yes, it is.  
23 Q Do you see, sir, in the upper right-hand corner there  
24 is a time depicted?  
25 A Yes, sir.

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- 1 Q Is it fair to say the time depicted was 3:35 p.m.?  
2 A Yes, it is.  
3 Q Is it fair to say, sir, that at the bottom of the  
4 form, the last line, there is also a line for the time?  
5 A Yes, there is.  
6 Q So it's fair to say that the form has two possible  
7 entries for the time, correct?  
8 A Correct.  
9 Q Is it fair to say at the bottom of the form there are  
10 three signatures? Correct?  
11 A Two -- three, yes.  
12 Q The first signature is Mr. Valerio's, correct?  
13 A That's correct.  
14 Q And the second is yours, correct?  
15 A That's correct.  
16 Q And the third is Special Agent Danielle Messineo?  
17 A Yes.  
18 Q Below Agent Messineo's name where the time is typed,  
19 there is a blank, correct?  
20 A Correct.  
21 Q This interview, Special Agent Troyd, occurred at the  
22 FBI offices in Melville, correct?  
23 A That's correct.  
24 Q It would be fair to say this was the same office  
25 where Olena Kalichenko at a later date would be

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- 1 interviewed?  
2 A That's correct, sir.  
3 Q Special Agent Troyd, was this interview of  
4 Mr. Valerio recorded with audio?  
5 A No.  
6 Q Was it video recorded?  
7 A No.  
8 Q On the day that Mr. Valerio was interviewed, did the  
9 FBI have in its possession both audio and video recording  
10 devices?  
11 A Yes.  
12 Q Special Agent Troyd, did you or any other agent  
13 produce an FBI 302 of this arrest on February 24th?  
14 A Yes.  
15 MR. LATO: May I have a moment to confer with  
16 counsel?  
17 THE COURT: Sure.  
18 Q Now, Special Agent Troyd, did you also make a  
19 handwritten note in addition to the FBI 302?  
20 A No.  
21 Q Did Agent Messineo make a handwritten note as far as  
22 you know?  
23 A Yes, I believe she did.  
24 Q Now, is it fair to say that it's your recollection  
25 that Mr. Valerio said "I want to kill myself"?

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- 1 **A Yes.**
- 2 **Q** Is it also your recollection that he said, "I don't
- 3 have a family anymore?"
- 4 **A Yes, that's correct.**
- 5 **Q** Did you ask him to elaborate?
- 6 **A No, I did not.**
- 7 **Q** Did you ask him why he wanted to kill himself?
- 8 **A It was obvious.**
- 9 **Q** Yes or no?
- 10 **A No.**
- 11 **Q** Did you ask him why he didn't have a family anymore?
- 12 **A No, I did not.**
- 13 **Q** This window -- I'm sorry.
- 14 The office in which you interviewed Mr. Valerio,
- 15 how many law enforcement officers were present besides you
- 16 and Agent Messineo?
- 17 **A It was only Agent Messineo and myself.**
- 18 **Q** How large was the office?
- 19 **A It's -- the arrest processing area is where the**
- 20 **interview was conducted. There are two smaller interview**
- 21 **rooms that are equipped with a handrail for handcuffing.**
- 22 **They fit probably the end of the table and not much**
- 23 **else --**
- 24 **Q** I'll cut you off and ask the question again.
- 25 The area in which you interviewed Mr. Valerio,

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- 1 how large was that area in feet, approximately?
- 2 **A 8 by 12.**
- 3 **Q** Was there a door to that area?
- 4 **A Yes.**
- 5 **Q** Was the door opened or closed?
- 6 **A Opened.**
- 7 **Q** Were there any windows in this area?
- 8 **A There are no windows in the arrest processing area.**
- 9 **Q** Were you wearing your sidearm?
- 10 **A No.**
- 11 **Q** Was Agent Messineo, to your knowledge?
- 12 **A No.**
- 13 **Q** Now, Special Agent Troyd, are you familiar with a
- 14 camera clock, or a clock with a camera, that was seized
- 15 during the execution of the search?
- 16 **A Yes, I am.**
- 17 **Q** Is it fair to say that you are the case agent in this
- 18 case?
- 19 **A Yes, I am.**
- 20 **Q** As far as you know, were any videos taken with that
- 21 camera clock?
- 22 **A I do not know.**
- 23 THE COURT: Mr. Lato, it's about 4:30. So if
- 24 this is a good point to break...
- 25 MR. LATO: Yes, I still have about 15 minutes,

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- 1 your Honor.
- 2 THE COURT: That's fine. We'll start at 9:45
- 3 instead of 9:30.
- 4 Don't discuss the case with anyone. Do not read
- 5 anything regarding the case.
- 6 Have a good night.
- 7 THE JURY: Thank you.
- 8 (Whereupon, at this time the jury exits the
- 9 courtroom.)
- 10 THE COURT: If everyone can be seated.
- 11 You may step down.
- 12 THE WITNESS: Thank you, your Honor.
- 13 THE COURT: So, Mr. Lato, about another
- 14 15 minutes you have.
- 15 Are you going to call the woman you were going
- 16 to call today? I forgot her name.
- 17 MR. KABRAWALA: It's the mother of Jane Doe
- 18 number two. She was actually here all day. We sent her
- 19 home, and we'll be calling her back tomorrow morning.
- 20 THE COURT: And you have an expert?
- 21 MR. KABRAWALA: We have an expert, Judge.
- 22 THE COURT: And that's it?
- 23 MR. KABRAWALA: And we actually have one other
- 24 person, a probation officer, that has been briefed.
- 25 THE COURT: So I'll see you in the morning.

Proceedings

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- 1 Was that probation officer on the list -- what
- 2 do you want to elicit rather?
- 3 MR. KABRAWALA: That the defendant was at the
- 4 time on probation for a misdemeanor, and as a result of
- 5 that, she was supervising him. And in searching his
- 6 house, she found hidden items throughout the basement.
- 7 The defendant admitted he had items in the
- 8 basement. We'll not say what was actually hidden.
- 9 There's also another portion that we requested
- 10 that the defendant -- during that probation search,
- 11 defendant admitted that he was aroused by the act of
- 12 filming female -- adolescent females.
- 13 THE COURT: When you say she found the items in
- 14 the basement --
- 15 MR. KABRAWALA: Yes, in the crawl space, yes.
- 16 THE COURT: What did she find?
- 17 MR. KABRAWALA: She found a lot of videotapes of
- 18 surreptitious filming of girls at beaches and of people
- 19 who apparently were changing in rooms in the house.
- 20 She found videos of people who were apparently
- 21 being filmed with the defendant without their knowledge.
- 22 THE COURT: Where were they found?
- 23 MR. KABRAWALA: In the crawl space of the
- 24 basement.
- 25 THE COURT: All right.

Proceedings

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1 MR. KABRAWALA: And the defendant admitted he  
2 put them there.  
3 MR. LATO: Your Honor, we object. This is  
4 404(b) evidence, and this is the problem.  
5 In terms of probative value, the closer in time,  
6 the greater the probative value. The greater the  
7 similarity between the two offenses, the greater the  
8 probative value.  
9 Those videos, the probation officer would say,  
10 were shot many years before the probation officer found  
11 them, which means eight, ten, 12 years separates the  
12 filming of those videos from the filming alleged in this  
13 case. So we have the remoteness in time.  
14 We also have the dissimilarity. This case, we  
15 have the production of child pornography of, say, a  
16 one-and-a-half to three-year old and a five-year old.  
17 The video found in the crawl space are all much  
18 older, meaning adolescents. And we don't know how old --  
19 THE COURT: They just want to have testimony  
20 that they were hidden videos, not the substance found in  
21 the crawl space. So whatever probative value would be  
22 limited to that, not what is on the tapes.  
23 MR. KABRAWALA: We can say "hidden contraband."  
24 MR. LATO: What does that mean?  
25 You are asking the jury to speculate.

Proceedings

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1 What is in there?  
2 So if the jury doesn't know what is in there, it  
3 has no probative value.  
4 MR. KABRAWALA: Well, the Court can simply  
5 address that by telling the jury they should not  
6 speculate, and they can consider it or not with respect to  
7 the defendant's control over that space. It's very  
8 simple.  
9 If the Court wants, I'll lead the witness,  
10 probably eight or ten minutes of testimony, half of which  
11 would be --  
12 THE COURT: I'm precluding it. Under 403 it is  
13 not a close question. The probative value, that he hid  
14 something in the basement, not that he admits hiding the  
15 camera used or any other item that was an instrumentality  
16 of the crimes charged.  
17 What we have here, in order for you to bring in  
18 that he hid something in the basement, it would have to  
19 come out as a misdemeanor, which obviously has some  
20 prejudicial effect, which shows prior interaction with the  
21 law. And the Court, notwithstanding an instruction that  
22 you speculate -- if you say "contraband," it could be all  
23 kind of things. And if you say "tapes," it raises a  
24 specter in a case like this: What was on the tapes. And  
25 to certainly go into the tapes is extremely prejudicial.

Proceedings

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1 Whatever probative value it has of his control  
2 in the basement is substantially outweighed by the unfair  
3 prejudice that would result from that type of question.  
4 So I'll not allow that testimony.  
5 And your expert will be ready on Monday?  
6 MR. LATO: Yes.  
7 MR. BODE: With respect to the witness  
8 Imperiale, your Honor, Mr. Kabrawala will lead her toward  
9 the beginning of the examination. She put up her home for  
10 bail for the defendant. Obviously, that goes to her bias  
11 and how she views the defendant in this case.  
12 We'll lead through that and ask her if she put  
13 up her home as bail.  
14 The defense --  
15 THE COURT: You anticipate she'll be a hostile  
16 witness. I don't understand.  
17 MR. BODE: She has refused to meet with him.  
18 She will not speak with us. However, we have wanted to  
19 establish her position vis-à-vis her brother.  
20 She put up the home where her, her child, her  
21 husband, lives. The jury will know about the two arrests  
22 that were already out. We'll not suggest he is  
23 incarcerated. In fact, asking if she put up her house for  
24 bail for her brother does suggest he is out.  
25 We want to alert the Court to that.

Proceedings

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1 Mr. Kabrawala will lead through that. But  
2 obviously the fact that she was willing to put up her home  
3 for him really does establish 305.  
4 THE COURT: I think that is fair.  
5 Since you haven't met with her -- obviously,  
6 there can't be any hearsay.  
7 MR. BODE: That's a good point. Let me raise  
8 that now so both sides are on notice about it.  
9 She spoke to her daughter, whether or not her  
10 daughter recalls pictures taken by the defendant. We'll  
11 not elicit that. That is hearsay. The defense will not  
12 either, and we're putting them on notice of that.  
13 THE COURT: That may fall within the hearsay  
14 exception, so both sides should be aware of that.  
15 MR. LATO: Yes, your Honor.  
16 One thing, though, about the bail. It's my  
17 practice once I've argued it and the Court rules, I never  
18 say another word. However, I'd like an opportunity to be  
19 heard of the bringing out of the bail.  
20 THE COURT: Sure.  
21 MR. LATO: Ms. Imperiale, the witness, may be  
22 biased. If so, the matter about bail would arguably  
23 relevant. That's her bias.  
24 If in fact her answers do not show any bias,  
25 there would be no reason to bring out the fact that she

## Proceedings

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1 put up bail.

2 The problem in terms of unfair prejudice to  
3 Mr. Valerio is it puts the imprimatur of the Court to say  
4 it is a high bond, that he's a risk. There's really no  
5 probative value to it unless she shows some bias.

6 If they simply ask her, is this your daughter,  
7 and she says yes, and that's all they ask her, there is no  
8 reason to bring out she put up her house for bail.

9 THE COURT: Well, if they can impeach their own  
10 witness, the rules allow that, whether they are hostile or  
11 not. But I didn't think about the issue with respect to  
12 the amount.

13 MR. BODE: I'll even dumb it down. She sought  
14 to be a suretor of bail for her brother. We won't mention  
15 they put up a house or anything like that.

16 MR. LAPINTA: May I?

17 THE COURT: Yes.

18 MR. LAPINTA: May I offer a suggestion?

19 Why don't we craft a certain question that meets  
20 their need to have this jury understand that she's biased  
21 but yet does not open the issue of bail.

22 Let me make a suggestion. Why can't they just  
23 elicit the following question: Ms. Imperiale, isn't it a  
24 fact that you support your brother, Joseph Valerio,  
25 throughout this trial? In fact, you are supporting his

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1 MR. LATO: Your Honor, we've been heard and you  
2 ruled.

3 MR. BODE: We'll lead, but we don't know what  
4 she will say because we can't talk with her.

5 THE COURT: Have a good night.

6 See you at 9:45.

7 (Whereupon, the proceedings were adjourned until  
8 Thursday, November 6, 2014, at 9:45 a.m.)

## Proceedings

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1 defense in this case?

2 Why even mention bail?

3 MR. BODE: That's different. And with all due  
4 respect to defense counsel, they don't get to write our  
5 direct.

6 THE COURT: Support can be moral support. I  
7 think there is a difference between financial support and  
8 just support in general.

9 MR. LAPINTA: Isn't it a fact that you are  
10 willing to financially support your brother in this case?

11 Why mention bail, your Honor?

12 THE COURT: That may be a good point. By  
13 mentioning the word "bail," it will not be a shock to the  
14 jurors.

15 MR. BODE: In fact, he was released at that  
16 first time. She put up the house and he was released.

17 THE COURT: They have already heard that he was  
18 out for the second arrest, so they know he got bail. As  
19 long as it doesn't go into the amount, it solves any 403  
20 problem.

21 A juror wouldn't know what a suretor is.

22 MR. BODE: We'll pick a different word, your  
23 Honor.

24 THE COURT: Willing to sign a bond for bail.

25 MR. BODE: For bail.

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Government's Exhibit 404 was received in evidence	471
Government Exhibit 235, 238, 238-A, 243, 255-A, 246, and 247 were received in evidence	480
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, : 14 CR 0094  
v. : U.S. Courthouse  
JOSEPH VALERIO, : Central Islip, N.Y.  
Defendant. : TRANSCRIPT OF TRIAL  
November 6, 2014  
-----X 9:30 a.m.

BEFORE:

HONORABLE JOSEPH F. BIANCO, U.S.D.J.  
and a jury

APPEARANCES:

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Central Islip, New York 11722  
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Proceedings recorded by mechanical stenography.  
Transcript produced by computer-assisted transcription.



1 M O R N I N G S E S S I O N

2 (Case called.)

3 (Appearances noted.)

4 THE COURT: Good morning.

5 Mr. Valerio is present as well.

6 The jurors are all here.

7 Is there anything we need to address before we  
8 start?

9 MR. LATO: Not from the defense, your Honor.

10 MR. KABRAWALA: Not from the Government, your  
11 Honor.

12 THE COURT: All right.

13 Bring the jury out.

14 (Whereupon, the jury at this time enters the  
15 courtroom.)

16 THE COURT: Please be seated.

17 Good morning, members of the jury. I appreciate  
18 you getting in on this rainy day.

19 As you recall, yesterday when we ended, Special  
20 Agent Troyd was on cross-examination, so we'll continue  
21 from that point.

22 Special Agent Troyd, I remind you, you are still  
23 under oath.

24 Do you understand that?

25 THE WITNESS: Yes, your Honor.

**Troyd - Cross/Lato**

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1 THE COURT: Continue, Mr. Lato.

2 S T E V E N T R O Y D,

3 called as a witness, having been previously  
4 duly sworn, was examined and testified further  
5 as follows:

6 CROSS-EXAMINATION

7 BY MR. LATO: (Continued)

8 Q In the Valerio-Kalichenko investigation, did you want  
9 the investigation to be a thorough one?

10 A Yes, sir.

11 Q Is it fair to say that you wanted to gather all the  
12 relevant evidence to the investigation?

13 A Yes, sir.

14 Q Is it fair to say that you wanted to speak to all  
15 persons who may have had relevant information to give to  
16 you in this investigation?

17 A At different stages, yes.

18 Q Did you or another agent or detective speak with  
19 Mr. Valerio's mother, Frances?

20 A Yes.

21 Q Did you or another agent or a detective speak with  
22 Mr. Valerio's sister, Bernadette?

23 A Yes.

24 Q Did you or another agent or detective speak with  
25 Bernadette's husband, Angelo?

Troyd - Cross/Lato

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1 A Yes.

2 Q Is it fair to say that some law enforcement officer  
3 spoke with Bernadette and Angelo's daughter [REDACTED]

4 A Yes.

5 Q Is it fair to say that that person was a Detective  
6 Kirk?

7 A I'm not sure of the name.

8 Q Was it a man or a woman?

9 A I'm not sure. Detective Rory Forrestal was present  
10 for the interview.

11 Q Is it fair to say in the search of Mr. Valerio's  
12 house, the first search, you or other agents recovered  
13 costumes from the basement?

14 A Yes.

15 Q Did you learn in your investigation that Mr. Valerio  
16 has a daughter?

17 A I'm sorry, it was the second search that recovered  
18 costumes.

19 I'm sorry, what was the question?

20 Q Did you learn in your investigation that Mr. Valerio  
21 has a daughter?

22 A Yes.

23 Q And did you learn that the daughter's name is A [REDACTED]?

24 A Yes.

25 Q Is it fair to say that A [REDACTED] is about five or six

Troyd - Cross/Lato

572

1 years old?

2 A Yes.

3 Q Did anyone at the FBI speak to A [REDACTED]?

4 A We attempted to.

5 Q Do you know that Bernadette and Angela have another  
6 child in addition to [REDACTED]

7 A Yes.

8 Q Did anyone from law enforcement attempt to speak to  
9 that child?

10 A No.

11 Q Do you recall how old that child was?

12 A The Imperiale child?

13 Q Yes, sir.

14 A I think he's maybe a year or two older than [REDACTED]

15 Q Is it fair to say that no one attempted to speak to  
16 that child?

17 A No, no one attempted to speak to that child.

18 Q Did you learn that Mr. Valerio has a son named Andres  
19 [sic]?

20 A Yes.

21 Q Did you learn that Andres is about 19 years old?

22 A Yes, he's in college.

23 Q Did anyone from law enforcement, as part of this  
24 investigation, attempt to speak to Andres?

25 A No.

**Troyd - Cross/Lato**

573

1 Q During either of the searches of Mr. Valerio's home,  
2 did you see guitars?

3 A Yes.

4 Q Did you also see sports memorabilia?

5 A Yes.

6 Q In fact, did you also come across a movie poster of  
7 Arnold Schwarzenegger in Terminator 2?

8 A I'm not sure. I don't remember that directly.

9 Q Did you learn in your investigation how much time  
10 Andres spent at that house?

11 A No.

12 Q Did you speak to any of Andres' friends?

13 A Definitely not.

14 Q As you sit here, do you have any idea whether Andres  
15 or anyone else saw Mr. Valerio's user name that was open  
16 on his desk in the home office?

17 A No, I don't have any information about that.

18 Q Now, in the course of your career, have you seen  
19 homes with video surveillance systems on the outside of  
20 the house?

21 A Yes.

22 Q Is it fair to say that certain surveillance systems  
23 are available for the inside of a house?

24 A Yes.

25 Q The clock in this case with the camera in it, where



**Troyd - Cross/Lato**

574

1 did you find that?

2 A That was in the basement, on the wall above a  
3 computer, facing the couch where the pictures were taken  
4 of [REDACTED]

5 Q Was the camera clock operational at the time, meaning  
6 was it on?

7 A When I recovered the clock, it was no longer attached  
8 to the computer because the computer had been seized on  
9 January 28th.

10 Q On January 28th, did you know whether the clock was  
11 working that day, meaning hooked up?

12 A Yes, it was.

13 Q Is it fair to say that when it was working there was  
14 no one in view of the camera when you entered the house?

15 A No, it didn't cover the area of the entry of the  
16 house.

17 Q Is it fair to say that the camera was on all the time  
18 even though no one was in front of it?

19 A I couldn't tell you that.

20 MR. LATO: One moment, please, your Honor.

21 Q Special Agent Troyd, as the case agent in this case,  
22 are you aware whether any recordings were recovered by law  
23 enforcement from the clock camera?

24 A The question was, were they recovered by law  
25 enforcement?

**Troyd - Cross/Lato**

575

1 Q Yes.

2 A I'm not aware of any.

3 Q Special Agent Troyd, do you see on the screen  
4 Government's Exhibit 311 in evidence?

5 A Yes, sir.

6 Q Is the location depicted in 311 the location where  
7 the camcorder was found?

8 A Yes.

9 Q In fact, sir, at the lower portion of the photograph  
10 on the left side, is that the camcorder in its case?

11 A Yes.

12 Q Was there a hole in one of the ceiling tiles  
13 permitting the camera to look downward?

14 A I'm not aware of one.

15 Q Now, sir, is it fair to say that the camcorder was  
16 not set up to record from the location where you found it?

17 A It was not able to record in the condition we found  
18 it.

19 Q Now, during the search did you recover what has been  
20 entered into evidence as Government's Exhibit 325, the  
21 camera box?

22 A Yes.

23 Q And this was the camera box, the camcorder, found in  
24 the ceiling; is that correct?

25 A Yes.

**Troyd - Cross/Lato**

576

1 Q Was the password to use that camcorder on the box?

2 A There was a password written on the box. I don't  
3 believe that camcorders require passwords, but I may not  
4 be correct in that.

5 Q Would it be fair to say whatever that password was  
6 needed for, was open on the face of the box?

7 A Yes.

8 Q Now, do you recall testifying on direct examination  
9 that you spoke to Special Agent Angelini during the  
10 investigation?

11 A Yes.

12 Q And is it fair to say that in substance you told  
13 Agent Angelini not to tip off Kalichenko that she too was  
14 a target of the investigation?

15 A We discussed it, how to approach arresting  
16 Ms. Kalichenko, in numerous scenarios because we're  
17 dealing with foreign government, and they could decide not  
18 to extradite one of their citizens, and that would have  
19 basically made it impossible for us to arrest  
20 Ms. Kalichenko.

21 Q Would it be fair to say that she was a target of the  
22 investigation?

23 A Absolutely.

24 Q Is it fair to say that when she was talking to  
25 Special Agent Angelini, you didn't want Ms. Kalichenko to

**Troyd - Cross/Lato**

577

1 know that she in fact was a target? Correct?

2 A That's correct.

3 Q Because if she knew she was a target, you were  
4 concerned she could hide and destroy evidence; is that  
5 correct?

6 A I was more concerned that she would travel and we  
7 wouldn't have access to her. She had supplied us  
8 evidence. We had additional evidence: We had developed  
9 additional evidence, and it was beyond the point where her  
10 destroying evidence could have helped herself.

11 Q Did you say earlier this morning you wanted to gather  
12 all the relevant evidence to the investigation?

13 A Yes.

14 Q Were you concerned, irrespective whether you thought  
15 it would help her, that she could hide or destroy  
16 evidence? Yes or no.

17 A It wasn't a concern because --

18 Q Okay. You answered it, sir.

19 At some point after Mr. Valerio was arrested,  
20 did you ask Ms. Kalichenko to come to the United States?

21 A No.

22 Q Did another agent or law enforcement officer ask her  
23 to come to the United States?

24 A No.

25 Q Did you or another law enforcement officer learn

**Troyd - Cross/Lato**

578

1 after Mr. Valerio was arrested that in fact Ms. Kalichenko  
2 was on a plane to John F. Kennedy International Airport?

3 A I'm sorry, can I have the question again?

4 Q After Mr. Valerio was arrested, at some later date  
5 did you learn that Ms. Kalichenko was in fact on a flight  
6 from Ukraine to JFK International Airport?

7 A Yes.

8 Q When she arrived at the airport, did you or another  
9 agent meet her there?

10 A Yes.

11 Q Did you make arrangements to meet her there?

12 A Yes.

13 Q Is it fair to say that you drove Ms. Kalichenko to  
14 the FBI offices in Melville?

15 A Yes.

16 Q Is it fair to say at that point there was no danger  
17 that Ms. Kalichenko could hide or destroy any evidence in  
18 Ukraine?

19 A No, that she possibly could still destroy evidence.

20 Q While she was in your presence, is it your testimony  
21 that she could destroy evidence on the other side of the  
22 Atlantic?

23 A She could have made arrangements in advance to  
24 destroy evidence.

25 Q I didn't ask you that, sir.



**Troyd - Cross/Lato**

579

1                   While she's in your presence, did she have the  
2           ability to destroy evidence?

3       A     She herself physically could not destroy evidence  
4       when she was in my custody.

5       Q     Did you have some concern that she could still  
6       destroy evidence?

7       A     No.

8       Q     Did you arrest her, in fact, after you interviewed  
9       her at the FBI office in Melville?

10      A     I arrested her in JFK airport.

11      Q     So it would be fair to say she was in your custody,  
12      correct?

13      A     Yes, she was handcuffed and transported to the  
14      office.

15      Q     Is it fair to say that while in your custody she had  
16      no opportunity to use a telephone or other electronic  
17      device?

18      A     No, she did not.

19      Q     After you arrested her at John F. Kennedy airport,  
20      did you contact Special Agent Angelini?

21      A     Not immediately.

22      Q     Did you contact any FBI officer or liaison in Ukraine  
23      to try to gather Ms. Kalichenko's evidence in Ukraine?

24      A     No.

25      Q     After Ms. Kalichenko was in your custody, did you, as

**Troyd - Cross/Lato**

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1 part of your investigation, make any effort to retrieve  
2 e-mails from her account?

3 A No.

4 Q Did you make any effort, and by that I mean you or  
5 any law enforcement officers, to retrieve any text  
6 messages from Ms. Kalichenko's account?

7 A No.

8 Q Did you or any other law enforcement officer make any  
9 effort to retrieve any tweets from Twitter in this case  
10 from anyone's account?

11 A No tweets.

12 Q Did you attempt to retrieve Ms. Kalichenko's Facebook  
13 page?

14 A No.

15 Q Did you ever see [REDACTED], who was purported to be  
16 Ms. Kalichenko's infant daughter?

17 A Only in the images.

18 Q Have you ever laid eyes on the child?

19 A Not in person, no.

20 Q Do you know whether any law enforcement officer in  
21 this case, and by that I mean a federal law enforcement  
22 officer, has ever seen the live child depicted in the  
23 images in this case?

24 A No.

25 MR. LATO: One moment, please.

**Troyd - Cross/Lato**

581

1 Q With respect to any other law enforcement officer, do  
2 you know whether any Suffolk County detective or any other  
3 American law enforcement officer has ever laid eyes on the  
4 child depicted in the photographs?

5 A Not to my knowledge, no.

6 Q Do you know whether the militsaya, the police in  
7 Ukraine, ever picked up the child?

8 A No.

9 Q Do you have any nonhearsay information that the  
10 child, [REDACTED], is in fact Ms. Kalichenko's daughter?

11 MR. KABRAWALA: Objection, Judge.

12 THE COURT: I'll allow that. Overruled.

13 A I have a copy of the birth certificate which  
14 identifies her as the child of Olena Kalichenko.

15 Q Is that birth certificate in evidence in this case,  
16 sir?

17 A I believe it is available. I'm not sure if it has  
18 been put into evidence yet.

19 Q At some point did you indicate in your FBI 302s or in  
20 some other official document that the child depicted in  
21 the video is three years old?

22 A Yes.

23 Q Is it fair to say that the child depicted in the  
24 video is probably closer to a year and a half or two years  
25 old?

**Troyd - Cross/Lato**

582

1 A It's hard for me to identify the age of a child  
2 precisely, but she was a toddler.

3 MR. LATO: One moment, please.

4 (Counsel confer. )

5 Q Special Agent Troyd, have you watched all of the  
6 videos with the child [REDACTED] in it?

7 A Yes, mostly in high speed.

8 Q For those you watched in slower speed, is it fair to  
9 say that the child appears to be making child noises as  
10 opposed to speaking?

11 A I haven't watched many with the sound on.

12 Q Now, in your investigation, did you learn whether  
13 Ms. Kalichenko sent videos or pictures of her and [REDACTED]  
14 to persons other than Mr. Valerio?

15 A I'm sorry, is that in the course of my investigation?

16 Q Yes, sir.

17 A Oh, yes, there is an individual I'm aware of who  
18 received, I guess, one of the videos from her by mistake.

19 Q Well, without getting into "mistake," what is the  
20 person's name who received the video?

21 A It is unclear to me which individual it was. If you  
22 would like, I can explain further.

23 Q I would not like, sir. Thank you.

24 A Okay.

25 Q Is the person Alan Rothman?

Troyd - Cross/Lato

583

1 A No, I don't believe so.

2 Q Is the person Daniel Dittmeier?

3 A Possibly.

4 Q When you said a moment ago it was sent by mistake,  
5 was that your mistake, sir?

6 A No.

7 Q Would it be fair to say that Ms. Kalichenko said it  
8 was a mistake?

9 A Yes.

10 MR. KABRAWALA: Objection, Judge.

11 THE COURT: Overruled.

12 Q Do persons who commit crimes sometimes minimize their  
13 role?

14 A Absolutely.

15 Q I'm putting Exhibit 208 on the screen.

16 Did you see that, sir?

17 A Yes, I can.

18 Q Did you ever entertain the possibility that there  
19 could have been more than one [REDACTED]?

20 A No.

21 Q Is it fair to say in the e-mails [REDACTED] is sometimes  
22 spelled [REDACTED] and sometimes with a -- sometimes

23 [REDACTED]

24 A Yes, there are multiple spellings of her name.

25 Q Do you see in Exhibit 208 in the final paragraph

**Troyd - Cross/Lato**

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1 where it is written: Then that's what I want to see or

2 when you get back to seeing [REDACTED] again?

3 A Where is that?

4 Q The second paragraph, toward the end of the  
5 paragraph.

6 Do you see where my finger is, sir?

7 A Yes.

8 Q "Then that's what I want to see or when you get back  
9 to seeing [REDACTED] again."

10 Do you see that?

11 A Yes.

12 Q Is it your understanding that Ms. Kalichenko lived  
13 with [REDACTED]?

14 A Intermittently.

15 Q Do you know where [REDACTED] lived when she was not with  
16 Ms. Kalichenko?

17 A Yes.

18 Q Showing you Government's Exhibit 213 in evidence.

19 Do you see that, sir?

20 A Yes, sir.

21 MR. LATO: One moment, please, your Honor.

22 Q Do you see where I'm pointing, sir, beginning with  
23 the words "I ask"?

24 A Yes.

25 Q This looks like an e-mail from Mr. Valerio to



**Troyd - Cross/Lato**

585

1 Ms. Kalichenko, correct?

2 A Yes.

3 Q Is it fair to say that Mr. Valerio is writing: All I  
4 ask you in video with [REDACTED], when you are with her?

5 A Yes.

6 Q Is it still fair to say, as far as you are concerned,  
7 there was only one [REDACTED]?

8 A Yes.

9 Q I'm now putting Government's Exhibit 214 on the  
10 screen.

11 Do you see that, sir?

12 A Yes.

13 Q Do you see where my finger is pointing, sir?

14 A Yes.

15 Q Is it fair to say that this appears to be an e-mail  
16 from Ms. Kalichenko to Mr. Valerio? Correct?

17 A Yes.

18 Q Is it fair to say that Ms. Kalichenko is writing to  
19 Mr. Valerio: You know that I will be seeing my mentor?

20 A Yes.

21 Q Is it fair to say that during your investigation you  
22 learned that Ms. Kalichenko had a mentor?

23 A Yes.

24 MR. LATO: One moment, please.

25 (Counsel confer.)

**Troyd - Cross/Lato**

586

1 Q Continuing in that sentence, sir -- and I'll start  
2 from the beginning again:

3 You know that I will be seeing my mentor, and  
4 she actually allowed myself to stay at the house that she  
5 has outside of Moscow. I can make pics of that.

6 Do you see that, sir?

7 A Yes.

8 Q Did you learn that the mentor was a female, or a  
9 woman?

10 A It appears from that e-mail that she is a woman.

11 Q Does it appear from that e-mail what kind of pictures  
12 Ms. Kalichenko was writing about?

13 A No.

14 MR. LATO: I have less than five minutes to go,  
15 your Honor.

16 THE COURT: Okay.

17 Q I'm showing you Government's Exhibit 322 in evidence.

18 Do you see that, sir?

19 A Yes, sir.

20 Q Is it fair to say that this is a Western Union  
21 summary chart?

22 A Yes, it is.

23 Q And is what is depicted in here wire transfers from  
24 Joseph Valerio to Olena Kalichenko?

25 A Yes.

**Troyd - Cross/Lato**

587

1 Q Actually, sir, what is depicted in here is someone  
2 with the name Joseph Valerio is sending money to a person  
3 who used the name Olena Kalichenko; is that correct?

4 A Based on my investigation, I believe that it is  
5 Mr. Valerio --

6 Q I didn't ask you that.

7 Based on this exhibit, does this exhibit show  
8 the name Joseph Valerio is associated with the transfer of  
9 money to a person with the name Olena Kalichenko?

10 A Yes, those names are associated --

11 MR. LATO: That's it, sir.

12 Q Now, how long have you been a special agent with the  
13 FBI?

14 A It will be 20 years on November 21st.

15 Q Is it fair to say that you have seen some adult  
16 fetishes in your investigation --

17 MR. KABRAWALA: Objection, Judge.

18 THE COURT: Sustained.

19 Q I'm going to show you Government's Exhibit -- I'm  
20 sorry, Defendant's Exhibit B, C and D for identification.

21 Please look at them, sir.

22 A Yes.

23 Q Do you recognize Defendant's Exhibit B, C and D for  
24 identification?

25 A Yes, I do.

**Troyd - Cross/Lato**

588

1 Q Is it fair to say that these were seized from  
2 Mr. Valerio's house during the execution of one of the  
3 search warrants?

4 A Yes, on February 25th.

5 MR. LATO: Your Honor, I offer these as  
6 Defendant's Exhibit B, C and D.

7 MR. KABRAWALA: No objection, Judge.

8 THE COURT: Defendant's Exhibit B, C and D are  
9 admitted.

10 (Whereupon, Defendant's Exhibits B, C and D were  
11 received in evidence.)

12 Q Please pick up Defendant's Exhibit B, sir.

13 A Yes.

14 Q Is it fair to say that Defendant's Exhibit B is a  
15 costume in a plastic bag?

16 A Yes, it is.

17 Q Is it fair to say that it appears to be an adult  
18 costume in a plastic bag?

19 A It's an adult-sized costume.

20 Q Please pick up Defendant's Exhibit C in evidence.

21 A Yes.

22 Q Does that appear to be a costume in a plastic bag?

23 A Yes, it is.

24 Q Does it appear to be an adult costume in a plastic  
25 bag?

**Troyd - Cross/Lato**

589

1 A This is an adult-sized costume.

2 Q Please pick up Defendant's Exhibit D in evidence.

3 A Yes.

4 Q Does that appear to be a costume in a plastic bag?

5 A Yes, it is.

6 Q Does it appear to be an adult costume in a plastic  
7 bag?

8 A This is an adult-sized costume.

9 Q Special Agent Troyd, during the course of your  
10 investigation, did you look at all the e-mails between  
11 Mr. Valerio and Ms. Kalichenko?

12 A I believe I have.

13 Q Is it fair to say that in one or more of the e-mails  
14 there's an exchange about master-slave-dominatrix and the  
15 like?

16 A Yes, there is some conversation like that.

17 Q Although bizarre, if not involving minors, is that  
18 legal?

19 A There is no laws against that.

20 MR. LATO: Just one moment. I think I'm about  
21 done.

22 Your Honor, I'm just going to retrieve the  
23 costumes while I review something.

24 Nothing further, your Honor.

25 THE COURT: Redirect?

**Troyd - Redirect/Kabrawala**

590

1 MR. KABRAWALA: Yes, your Honor.

2 REDIRECT EXAMINATION

3 BY MR. KABRAWALA:

4 Q There were a number of costumes you were shown during  
5 cross-examination. Do you still have those out?

6 A Yes.

7 Q Showing you two items. One has been marked as  
8 Government's Exhibit 337; one has been marked Government's  
9 Exhibit 339.

10 Did you seize those two items from the  
11 defendant's home on February 25, 2014?

12 A Yes.

13 MR. KABRAWALA: Move to admit, Judge, both of  
14 them.

15 MR. LATO: No objection.

16 THE COURT: 337 and 339 are admitted.

17 (Whereupon, Government Exhibits 337 and 339 were  
18 received in evidence.)

19 MR. KABRAWALA: I will throw them on the  
20 overhead.

21 BY MR. KABRAWALA:

22 Q This is some sort of a receipt, an invoice. They are  
23 showing costumes?

24 A Yes.

25 Q This appears to be some invoice for some costumes?



**Troyd - Redirect/Kabrawala**

591

1 A Yes.

2 Q Who is it from?

3 A Celebrate Express, the best online party store since  
4 1994, located at 16205 West Small Road, New Berlin,  
5 Wisconsin, 53151.

6 1-800 BIRTHDAY. www.celebrateexpress.com.

7 Q Shipped to?

8 A Joseph Valerio, 3 High Gate Drive, Smithtown, New  
9 York, 11787.

10 Q Someone named Joseph Valerio at that address?

11 A That's correct, sir.

12 Q Let's walk through some of these items. Let's start  
13 with of the first one.

14 A The lighting on the overhead is not bright.

15 Q I'll read it to you.

16 Opaque tights (black), child, (large 7/10).

17 Sailor girl child costume.

18 Tan tights, child.

19 What is the next one?

20 A Fishnets, white, child, large.

21 Q Large fishnet stockings for a child?

22 A Yes.

23 Q The next is adult costume or tights?

24 A Yes.

25 Q The next is adult panty hose?

**Troyd - Redirect/Kabrawala**

592

1 A Yes, correct.

2 Q Nude color?

3 A Yes.

4 Q And there's a body suit, child. Medium sized?

5 A Yes.

6 Q What is this, lace footless tights?

7 A Yes, white tights, medium.

8 Q What is this?

9 A Robin Hoodlum tween costume.

10 Q Robin Hoodlum. I think I saw that somewhere.

11 Government's Exhibit 340.

12 Was this found at the defendant's house in  
13 February of this year?

14 A Yes, it was.

15 MR. KABRAWALA: Move to admit.

16 MR. LATO: No objection.

17 THE COURT: 340 is admitted.

18 (Whereupon, Government Exhibit 340 was received  
19 in evidence.)

20 MR. KABRAWALA: I will publish the picture.

21 Q Robin Hoodlum --

22 A Yes.

23 Q -- appears to be the same thing in the Celebrate  
24 Express invoice appearing to be shipped to Joseph Valerio?

25 A Yes.

**Troyd - Redirect/Kabrawala**

593

1 Q Here's the books admitted in evidence, number 337.

2 Let read the details.

3 Who is this from and who is this purportedly to?

4 A From Celebrate Express in New Berlin, Wisconsin, sold  
5 to Joseph Valerio, 1-631-265-2379.

6 Joseph Valerio, 3 High Gate Drive, Smithtown,  
7 New York.

8 Q What is the phone number listed?

9 A 1-631-265-2379.

10 Q Someone named Joseph Valerio appears to have received  
11 a package at a phone number ending in 2379. Is it fair to  
12 say?

13 A That's fair to say.

14 Q And someone named Joseph -- withdrawn.

15 Showing you what has been marked in evidence as  
16 Government's Exhibit 200.

17 If you recall, some account information that  
18 someone named Joseph Valerio signed up for through  
19 Cablevision and paid for for 12 years.

20 What is the phone number there?

21 MR. LAPINTA: Objection to form.

22 THE COURT: Sustained.

23 Just ask the question.

24 Q What is the phone number listed on Government's  
25 Exhibit 200-A?

**Troyd - Redirect/Kabrawala**

594

1 A 631-265-2379.

2 Q Does it appear to be the same phone number as was  
3 listed on Government's Exhibit 337?

4 A Yes.

5 Q Same address?

6 A Yes.

7 Q And by the way, is that the same address, 3 High Gate  
8 Drive, where the defendant lived?

9 A Yes.

10 Q That's where the search warrants were executed?

11 A Yes, that's correct.

12 Q You also -- you were also asked on cross-examination  
13 about this Exhibit 322. Is that fair to say?

14 A Yes.

15 Q That's the Western Union summary chart?

16 A Yes, it is.

17 Q That someone in the name of Joseph Valerio sent  
18 approximately \$12,350 over a number of wire transfers to  
19 someone named Olena Kalichenko?

20 A Yes.

21 Q That someone named Joseph Valerio lived at 3 High  
22 Gate Drive in Smithtown, New York, or at least purportedly  
23 lived there?

24 A Yes.

25 Q 3 High Gate Drive is the address of the defendant,

**Troyd - Redirect/Kabrawala**

595

1 isn't it?

2 A Yes, it is.

3 Q And someone who purported to be Olena Kalichenko,  
4 where did she receive money, generally speaking?

5 MR. LAPINTA: Objection.

6 Generally received money?

7 MR. KABRAWALA: Okay. I'll rephrase the  
8 question.

9 Q Is it fair to say that according to Government's  
10 Exhibit 322, someone named Olena Kalichenko picked up  
11 money in one of two countries: Ukraine and Turkey?

12 A Yes.

13 Q Now, someone named Joseph Valerio sent approximately  
14 \$12,350 to a woman by the name of Olena Kalichenko.

15 According to Government's Exhibit 10-A, Western  
16 Union records that has been admitted into evidence, what  
17 did that person report as their e-mail address?

18 A Joeval5@optonline.net.

19 Q What is the e-mail address associated with the  
20 defendant?

21 A Joeval5@optonline.net.

22 Q By the way, what is the telephone number?

23 A 631-265-2379.

24 Q So it's fair to say the person who sent over \$12,000  
25 to a person named Olena Kalichenko reported, according to

**Troyd - Redirect/Kabrawala**

596

1 Government's Exhibit 10-A, the same phone number as listed  
2 on everything that we've talked about today?

3 A Yes, sir.

4 Q You were asked about the defendant's January 28, 2014  
5 confession; is that correct?

6 A Yes.

7 MR. LATO: Objection to the characterization.

8 THE COURT: Sustained as to form.

9 Q You were asked about the defendant's statements on  
10 January 28, 2014; is it fair to say?

11 A Yes, I was.

12 Q You were asked during your cross-examination whether  
13 your interview with the defendant on that date,  
14 January 28, 2014, was filmed.

15 A Correct.

16 Q To your knowledge, has it ever been, in the entire  
17 history of the Federal Bureau of Investigation, a policy  
18 that interviews with a suspect in a suspect's home must be  
19 filmed?

20 A That has never been the policy.

21 Q The FBI has been around for a long time?

22 MR. LAPINTA: Objection.

23 THE COURT: Sustained as to form.

24 Q Now, is it true that the FBI adopted a new policy --

25 A Yes.



**Troyd - Redirect/Kabrawala**

597

1 Q -- in July of 2014?

2 A Yes.

3 Q That requires the videotaping of certain kinds of  
4 interviews at FBI or the Department of Justice facilities?

5 A Even then, there would be exceptions to that.

6 Q All right.

7 So in July of 2014 the FBI adopted a policy,  
8 with many exceptions, which required filming of certain  
9 kind of interviews that occur at FBI or Department of  
10 Justice facilities?

11 A Yes.

12 Q And your interview with the defendant happened at his  
13 house approximately six months earlier, in January of this  
14 year?

15 A That's correct.

16 Q You were also asked during your cross-examination  
17 about guns, the presence of firearms. I think there was  
18 even a reference to 40-caliber, something with 40-caliber,  
19 at the defendant's house?

20 A Yes. That is the standard-issue caliber for FBI  
21 agents.

22 Q What is it, a shotgun?

23 A No, it's a pistol.

24 Q It's not a machine gun or anything, right?

25 A No, a handgun.

**Troyd - Redirect/Kabrawala**

598

1 Q By the way, are you even allowed to be in the field  
2 without guns?

3 A No. When I'm on duty, I need to carry my weapon.

4 Q It's a policy that you have to carry a weapon, isn't  
5 it -- withdrawn.

6 Now, you testified that to your knowledge no  
7 one's gun was visible while you were at the defendant's  
8 house that day.

9 A Yes.

10 Q Did you see anyone, at any point on January 28, 2014,  
11 draw their weapon?

12 A No.

13 Q Did anyone point a gun at the defendant at any point?

14 A No.

15 Q Now, you mentioned that you, Detective Forrestal,  
16 Special Agent Danielle Messineo, were seated at a dining  
17 room table?

18 A Yes.

19 Q Let me show you a picture of that.

20 I'm publishing 302.

21 There it is.

22 This is the dining room table that is depicted  
23 in Government's Exhibit 302 that is now published,  
24 correct?

25 A That's correct.

**Troyd - Redirect/Kabrawala**

599

1 Q Was the defendant handcuffed while -- during the  
2 meeting?

3 A No.

4 Q Was he restrained in any way?

5 A No.

6 Q Did anyone raise their voice at him?

7 A No.

8 Q I'm going to look at this table in detail and try to  
9 zoom in on it.

10 What is going on here? Someone had coffee?

11 A Yes, that's my large cup of coffee.

12 Q What is that, a rainbow mug next to it?

13 A Almost looks like Winnie the Pooh.

14 Q Cupcake?

15 A Looks like cupcake.

16 Q Was the defendant drinking out of that cupcake or  
17 Winnie the Pooh mug?

18 A The defendant asked for water, and we provided it in  
19 that mug.

20 Q Defendant's Exhibit A was a black and white picture  
21 of a detail of the desk/office area of the defendant's  
22 house, in the second floor?

23 A Yes.

24 Q This is Defendant's Exhibit A.

25 Now I'm showing you Government's Exhibit 565.

**Troyd - Redirect/Kabrawala**

600

1                   Is there any difference in those pictures other  
2                   than the fact that 565 is a color version?

3           A     The detail is better on the color version.

4           Q     And 565, is that a fair and accurate depiction of the  
5                   area that is depicted on -- in the defendant's house on  
6                   January 28, 2014?

7           A     Yes.

8                   MR. KABRAWALA: The Government moves to admit.

9                   MR. LATO: No objection.

10                  THE COURT: 565 is admitted.

11                  (Whereupon, Government Exhibit 565 was received  
12                   in evidence.)

13           Q     So you were asked about essentially an e-mail address  
14                   and a password that were in plain view while you were in  
15                   the house; is that fair to say?

16           A     Yes.

17           Q     I want to zoom in on what you were being asked about.

18                   Actually, did you next know what you were being  
19                   asked about, what piece of paper? Can you describe where  
20                   it is?

21           A     It's the paper in the center of the screen of the  
22                   photo. It was to the left of the PAL sticker.

23           Q     Is that the blue sticky note?

24           A     Actually, what I testified yesterday, I was reading  
25                   from the white page that the blue note is attached to.

**Troyd - Redirect/Kabrawala**

601

1 Q All right. I'm just going to zoom in on that.

2 Can you see that?

3 A Yes.

4 Q Did you see that? I'm going to zoom on it even more.

5 So in this white area in the center of the page  
6 that appears to be in a notebook of some kind, written in  
7 blue ink, joeval5@optonline.net, and it's kind of  
8 underlined.

9 A With the word "upper" under the word "joeval," and  
10 "low" under the 66.

11 Q That was in plain view for everyone to see?

12 A Yes, sir.

13 Q And some kind of password maybe?

14 A Yes, maybe.

15 Q Let's zoom in even more.

16 What does that say there on the blue note?

17 Joeval at what?

18 A At gmail.

19 Q At gmail, right?

20 A Yes.

21 Q And there's a password underneath it. It says,  
22 Joeval and there's a series of numbers?

23 A Yes.

24 Q What is the e-mail we've been discussing this entire  
25 trial relating to Joseph Valerio?

**Troyd - Redirect/Kabrawala**

602

1 A Joeval5@optonline.net.

2 Q Joeval5@optonline.net?

3 A That's correct.

4 Q Not joeval66@gmail?

5 A That is correct.

6 Q By the way, you were asked about the defendant's  
7 daughter, A [REDACTED], today. Do you remember?

8 A Yes.

9 Q To your knowledge, what country do A [REDACTED] and her  
10 mother live in?

11 A I believe it was South Africa.

12 Q South Africa?

13 A Right.

14 Q What is that, on the other side of the world?

15 A Pretty much.

16 Q Did Andre, the defendant's son went there, live there  
17 when you went there twice?

18 A I didn't see him on either occasion.

19 Q He's in college?

20 A Yes, sir.

21 Q You were asked about the February 24, 2014, what  
22 we've been calling the second arrest.

23 Do you remember that?

24 A Yes.

25 Q Now, defense counsel asked you whether the defendant



**Troyd - Redirect/Kabrawala**

603

1 was Mirandized, and he actually went over the advice of  
2 rights form that the defendant and agent completed that  
3 day.

4 Do you remember that?

5 A Yes.

6 Q After the Miranda warnings were given, the defendant  
7 was asked, according to your testimony on direct, why he  
8 was being arrested.

9 And in response -- why don't you tell us what  
10 you said.

11 MR. LAPINTA: Objection.

12 THE COURT: You said "on direct" and said "that  
13 day."

14 MR. KABRAWALA: All right. Let me rephrase the  
15 question.

16 Q Is it fair to say that after the defendant was  
17 advised why he was being arrested for a second time, he  
18 said in sum and substance, I want to kill myself, and I  
19 don't have a family anymore?

20 A In reverse order, but he did say those things.

21 Q At that point, I think on cross you had said you  
22 brought him to the FBI's office in Long Island and you  
23 processed him in a processing area?

24 A Yes, we have an arrest processing area that is  
25 excluded from the rest of the office for safety purposes.

**Troyd - Redirect/Kabrawala**

604

1 Q And at any point that day, did you actually sit down  
2 and interview the defendant again?

3 A No, other than pedigree information for the arrest  
4 processing paperwork.

5 Q Pedigree. What is that?

6 A Date of birth, associates, family members. It's  
7 essentially a U.S. Marshal's form required when we bring a  
8 prisoner in, so should they need to locate him in the  
9 future, they have it available.

10 Q Essentially background information, name and address;  
11 is that right?

12 A That's correct.

13 Q But you didn't sit down to interview him again?

14 A No.

15 Q Okay.

16 Defense counsel asked you -- he made reference  
17 to a particular e-mail, Government's Exhibit 214 that I'm  
18 now publishing.

19 A Yes.

20 Q Well, with respect to this e-mail of April 12, 2012,  
21 from Kalichenko to joeval5@optonline.net, there is some  
22 discussion in the e-mail of Ms. Kalichenko being away from  
23 her daughter?

24 A Yes.

25 Q There was a suggestion that there are two [REDACTED].

**Troyd - Redirect/Kabrawala**

605

1 MR. LATO: Objection.

2 THE COURT: Sustained as to form.

3 Q There was a question about whether you believed there  
4 might be two [REDACTED] out there.

5 A Yes.

6 Q Well, what defense counsel didn't show you, I will  
7 show you now.

8 At the bottom of this e-mail, while it appears  
9 that Kalichenko is away from her daughter, just read the  
10 last couple of lines in the e-mail starting "I really  
11 missed..."

12 A I really missed you, Joseph, and [REDACTED], my daughter,  
13 as well...kisses, Helena.

14 THE COURT: How does she spell [REDACTED] there?

15 THE WITNESS: [REDACTED].

16 Q What does she call [REDACTED]? "My daughter," right?

17 A Yes.

18 Q By the way, do you know if there are variations,  
19 common variations, of the spelling of [REDACTED], whether they  
20 be English or Ukrainian?

21 A Yes.

22 Q One of the spellings sometimes could be [REDACTED],  
23 S [REDACTED]?

24 A Yes.

25 MR. KABRAWALA: Nothing further, Judge.

**Troyd - Recross/Lato**

606

1 THE COURT: Any recross?

2 MR. LATO: Yes, your Honor, about five minutes.

3 THE COURT: Go ahead.

4 We'll take a break after that.

5 RECROSS-EXAMINATION

6 BY MR. LATO:

7 Q Special Agent Troyd.

8 A Yes, sir.

9 Q Do you see Government's Exhibit 339 on the screen?

10 A Yes, I do.

11 Q Do you see in the upper right-hand corner the order  
12 date?

13 A Yes.

14 Q Is it fair to say the order date is March 23rd of  
15 2011?

16 A That's correct.

17 Q Did you check the date stamp on the camcorder you  
18 received from the ceiling in this case?

19 A I did not, but other investigators have.

20 Q Are you familiar with the dates of the recordings of  
21 [REDACTED]?

22 A Yes.

23 Q Is it fair to say that one of the recordings was  
24 September 10th of 2010?

25 A I'm certain that it was 2010.

**Troyd - Recross/Lato**

607

1 Q Is it fair to say that the other one was January 19th  
2 of 2011?

3 A I'm not sure on the second one.

4 Q Is it fair to say that even if you are not sure, the  
5 videos of [REDACTED] precede the order date on this receipt?

6 A I would say that is possible, yes.

7 Q Do you recall being asked on redirect about the FBI  
8 policy changing this year with respect to recording?

9 A Yes.

10 Q Prior to January of this year, did the FBI ever  
11 attach cameras or audio devices to informants and  
12 undercover officers?

13 A Yes.

14 Q As far as you knew in January when you interviewed  
15 Mr. Valerio, it was lawful for you to record the  
16 conversation?

17 A It would be lawful.

18 Q Now, do you recall being asked on redirect whether,  
19 during your interview of Mr. Valerio on January 28th,  
20 whether anyone pointed a gun at him?

21 A Yes, I was asked that.

22 Q Now, is it fair to say that Mr. Valerio's height and  
23 weight are about the same today as they were on  
24 January 28th of this year?

25 A Yeah, approximately the same.

**Troyd - Recross/Lato**

608

1 Q Is it fair to say that your height and weight are  
2 about the same today as you were on January 28th?

3 A I've been up and down about 20 pounds, depending upon  
4 the time.

5 Q Is it fair to say in the interview room every person,  
6 male person, was taller than Mr. Valerio?

7 A Yeah, I would say that is true.

8 Q About how tall is Detective Forrestal?

9 A Probably the same height at me, 5-10, maybe.

10 Q One of the other agents was Special Agent Messineo,  
11 who is in the first row, correct?

12 A Yes.

13 Q And there was one other Suffolk County officer  
14 standing in the room, correct?

15 A Detective Badalucco from Nassau County.

16 Q Was he about your height or taller back in about  
17 January?

18 A About the same size.

19 Q Were you all armed?

20 A I believe everyone was, but I didn't check.

21 Q Did you really need that many officers to interview  
22 Mr. Valerio?

23 MR. KABRAWALA: Objection, Judge.

24 THE COURT: Overruled.

25 You may answer.



**Troyd - Recross/Lato**

609

1 A No, actually --

2 Q That's it.

3 A Okay.

4 Q Do you recall being asked on redirect whether  
5 Mr. Valerio's son Andre was in college?

6 A Yes.

7 Q Does the FBI have the ability to interview persons in  
8 college?

9 A Yes.

10 Q Did you have that ability throughout this  
11 investigation?

12 A Certainly.

13 Q Is it fair to say that in this investigation the FBI  
14 had the ability to interview persons in Ukraine?

15 A Not unfettered access.

16 Q So there was a fettered access?

17 A Yeah, there was some --

18 Q Okay. Now, did law enforcement interview [REDACTED], the  
19 daughter, the young girl in this case?

20 A She was interviewed.

21 Q Would it be fair to say when she was interviewed, she  
22 was not in college?

23 A No, sir.

24 Q But she was, however, in a public school?

25 A I was not present for that interview.

**Troyd - Further Redirect/Kabrawala**

610

1 Q Is it fair to say that [REDACTED] was interviewed at  
2 school?

3 A Contact with her may have been when she was at  
4 school, but I'm not sure where it proceeded from there.

5 Q Did the FBI have the ability to interview Andre at  
6 college? Yes or no?

7 A Yes, they could have.

8 MR. LATO: Nothing further.

9 THE COURT: Mr. Kabrawala?

10 MR. KABRAWALA: Very brief.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. KABRAWALA:

13 Q Sevastopol, Ukraine. It's been in the news a lot?

14 A Yes, it has.

15 Q Didn't it go recently, within the last year, from  
16 Ukrainian hands to Russian hands?

17 MR. LATO: Objection.

18 THE COURT: Sustained.

19 Q There's a civil war going on there, right?

20 MR. LATO: Objection.

21 THE COURT: Sustained to form.

22 MR. KABRAWALA: Nothing further.

23 THE COURT: You may step down, sir. Thank you.

24 All right. We'll take the morning break.

25 Do not discuss the case.

**Troyd - Further Redirect/Kabrawala**

611

1 (Whereupon, at this time the jury exits the  
2 courtroom.)

3 (Whereupon, a recess was taken.)

4 THE COURT: Please be seated.

5 Ready for the jury?

6 MR. BODE: The next witness has glaucoma, so her  
7 sight is limited --

8 THE COURT: Wait until the jury comes in.

9 MR. BODE: I don't want her to fall, Judge.

10 (Whereupon, the jury at this time enters the  
11 courtroom.)

12 THE COURT: Everyone be seated.

13 Call your next witness.

14 MR. KABRAWALA: The United States calls  
15 Bernadette Imperiale, Judge.

16 THE COURT: Please remain standing for the oath,  
17 Ms. Imperiale.

18 **B E R N A D E T T E I M P E R I A L E,**

19 called as a witness, having been first

20 duly sworn, was examined and testified

21 as follows:

22 THE WITNESS: My name is Bernadette,

23 B-E-R-N-A-D-E-T-T-E. Last name is Imperiale,

24 I-M-P-E-R-I-A-L-E.

25 THE COURT: Be seated, Ms. Imperiale.

**Imperiale - Direct/Kabrawala**

612

1 I'll ask my deputy to move the mike close to  
2 you. And please keep your voice up.

3 MR. KABRAWALA: Your Honor, would the Court mind  
4 moving the computer screen away from counsel?

5 DIRECT EXAMINATION

6 BY MR. KABRAWALA:

7 Q Good morning, Mrs. Imperiale. My name is Ameet  
8 Kabrawala, and I'm an Assistant U.S. Attorney here, and  
9 I'll be asking you some questions here today.

10 A Okay.

11 Q If you can't hear me or I haven't asked a clear  
12 question, let me know, and I'll try to rephrase it and do  
13 a better question.

14 A Okay.

15 Q It's a really big courtroom, so if you can keep your  
16 voice up, I think everyone would appreciate that.

17 A Okay.

18 Q You are Joseph Valerio's sister, right?

19 A Yes.

20 Q Is that the gentleman I'm pointing out in the brown  
21 suit over here to my right?

22 Is that your brother?

23 A Yes.

24 Q Do you have a daughter?

25 A Yes.

Imperiale - Direct/Kabrawala

613

1 Q What is her name?

2 A [REDACTED].

3 Q By the way, you and I have never met, right?

4 A No.

5 Q What is your daughter's birthday?

6 A [REDACTED].

7 Q That's [REDACTED]?

8 A Yes.

9 Q So she's nine?

10 A Nine and a half.

11 Q Nine and a half.

12 You and I have never met before until just now?

13 A Yes.

14 Q Are you aware that I asked to speak with you before  
15 today's testimony?

16 A Uhm, yes.

17 Q And you didn't want to speak to me, right?

18 A I'm sorry?

19 Q You declined the invitation. You didn't want to  
20 speak to me, right, before today?

21 A Before today, yes.

22 Q When this case arose and your brother was arrested,  
23 did you sign a bond, a bail bond, in this case?

24 A Yes, I did.

25 Q You support your brother, right?

**Imperiale - Direct/Kabrawala**

614

1 A Yes, I do.

2 Q You love your brother?

3 A Yes.

4 Q He's your own flesh and blood?

5 A Yes.

6 Q I want to show you a picture. I'll pull it up --  
7 I'll bring you this picture, and I'll also put it up on  
8 the screen for everybody else.

9 I'm just going to put it on the screen for  
10 everybody else, and I'll bring you a printed copy of it.  
11 I'll do it in reverse order.

12 Showing you what has been entered into evidence  
13 as Government's Exhibit 300-B.

14 Can you see that?

15 A Let me just put on my other glasses.

16 Yes.

17 Q Do you recognize that picture, what's in it?

18 A It looks to be my brother's home.

19 Q Your brother's house?

20 A Yes.

21 Q By the way, do you know your brother's address off  
22 the top of your head?

23 A Yes. 3 High Gate.

24 Q Is that H-I-G-H, G-A-T-E?

25 A Yes.



Imperiale - Direct/Kabrawala

615

1 Q What town is it in?

2 A Smithtown.

3 Q Is that Smithtown?

4 A I don't know.

5 Q Have you been to that house?

6 A Yes.

7 Q It's fair to say you've been there on a number of  
8 occasions?

9 A I would say yes.

10 Q Did there come a time when your brother Joseph asked  
11 you to have your daughter [REDACTED] model?

12 A Yes.

13 Q When was that, about?

14 A It could have been -- I would probably say a few  
15 years ago, something like that.

16 Q How old was your daughter around that time when your  
17 brother Joseph asked that [REDACTED] model?

18 A I would say about six years old.

19 Q About six?

20 A About six, yes.

21 Q So is it fair to say if she was born in 2005 -- so  
22 somewhere around 2010 or 2011?

23 A I would say yes.

24 Q Did he say that models could make money?

25 A Yes.

**Imperiale - Direct/Kabrawala**

616

1 Q And did you say yes, that [REDACTED] could model with  
2 your brother?

3 A Yes.

4 Q Do you know where that modeling happened?

5 A It was downstairs.

6 Q Downstairs at 3 High Gate?

7 A Yes.

8 MR. LATO: Your Honor, I will object without a  
9 foundation how she knows this.

10 MR. KABRAWALA: Okay.

11 Q Did you ever go with [REDACTED] -- did you bring her to  
12 your brother's house to do the modeling?

13 A I would go with my mom.

14 Q With your mom?

15 A Yes, because I don't drive.

16 Q And would you accompany your daughter? That is,  
17 would you go with your daughter to your brother's house at  
18 3 High Gate for the modeling?

19 A Yes.

20 Q And you said it was downstairs.

21 Was it the downstairs basement?

22 A Yes.

23 Q The basement?

24 A Yes.

25 Q Had you ever been in the basement while the modeling

**Imperiale - Direct/Kabrawala**

617

1 was going on?

2 A Couple of times.

3 Q Couple of times?

4 A Uh-huh.

5 Q And would your daughter be dressed up in outfits?

6 A Yes, costumes.

7 Q What kind of costumes?

8 A Like a fairy type of a costume.

9 Q A fairy type of a costume?

10 A Like a cheerleading type of costume.

11 Q A cheerleading costume?

12 A Yes.

13 Q You had mentioned that you went down into the  
14 basement a couple of times for some of the modeling  
15 shoots.

16 Were there times that you were not in the  
17 basement while the modeling was going on, to your  
18 knowledge?

19 MR. LATO: Objection.

20 THE COURT: Yes, sustained.

21 You have to lay a foundation for that.

22 Why don't you approach.

23 (Whereupon, at this time the following took  
24 place at the sidebar.)

25 (Continued.)

**Imperiale - Direct/Kabrawala**

618

1 THE COURT: What she can testify to is when she  
2 was there or what Mr. Valerio told her. So just don't ask  
3 open-ended questions, things that your daughter may have  
4 told you.

5 MR. KABRAWALA: Thank you.

6 MR. BODE: May we have some lead?

7 THE COURT: You don't have to ask "from  
8 conversations with your brother."

9 MR. BODE: We've never talked to her, so we  
10 don't know all the details.

11 THE COURT: If you want, I'll tell her based on  
12 what she saw or only what her brother told her, okay?

13 MR. KABRAWALA: Yes, Judge.

14 (End of sidebar conference.)

15 (Continued.)

16 THE COURT: Ms. Imperiale, they are asking about  
17 things with respect to the questions regarding modeling.  
18 You can only answer the questions based upon things that  
19 you observed or that Mr. Valerio, your brother, told you.  
20 They can't be based on anything else, that someone else  
21 told you.

22 It has to be something you know because you were  
23 there or something that your brother told you. Okay?

24 THE WITNESS: Right.

25 THE COURT: Go ahead.

**Imperiale - Direct/Kabrawala**

619

1 BY MR. KABRAWALA:

2 Q Were there times -- did you ever dress [REDACTED] in any  
3 costumes?

4 A Yes, I did. Yes, I did.

5 Q Where would you dress her?

6 A Upstairs.

7 Q Did you ever see her go into the basement without you  
8 dressed in a costume for the modeling shoots?

9 A No.

10 Q Were there ever times that your brother said that he  
11 was going to have her model in the basement?

12 A Yes, he said it would be in the basement.

13 Q Did your brother ever tell you that she would be  
14 modeling without you there in the basement?

15 A There were a couple of times.

16 Q A couple of times.

17 When would you say that was, approximately?

18 A I'm not really sure. I'm not sure.

19 Q I'm sorry, can you repeat that, please?

20 A I'm not really sure.

21 Q Thank you.

22 Were you ever shown any of the pictures from the  
23 modeling session?

24 A Just from -- just the agents.

25 Q What do you mean by that?

**Imperiale - Direct/Kabrawala**

620

1 A They would -- came to my home and just shown me a  
2 couple of pictures, dressed in her costume.

3 Q Approximately how many times did your daughter model  
4 in the basement? And that is based on either what you saw  
5 or what the defendant told you?

6 A I know it was either once or twice a year.

7 Q Once or twice a year?

8 A A year. It could have been -- let's say a couple of  
9 years, I would say.

10 Q It's fair to say in total about four times?

11 A I would say, yeah, about three or four times.

12 Q And you mentioned that [REDACTED] was dressed in fairy  
13 costumes, cheerleader costumes. Is that fair to say?

14 A Yes.

15 Q I will show you some pictures, and I want you to  
16 identify whether you recognize the person depicted in  
17 them. And these are all pictures where the child is  
18 clothed.

19 I'm showing you just for identification  
20 Government's Exhibit 510.

21 Do you recognize that child?

22 A Yes.

23 Q Who is that?

24 A That's my daughter.

25 Q Your daughter [REDACTED]?



Imperiale - Direct/Kabrawala

621

- 1 A Yes.
- 2 Q Can you describe how she is dressed, like the color,  
3 what kind of outfit?
- 4 A I think it's some type of dress, I think.
- 5 Q Like a blue dress? Shiny?
- 6 A Something like that.
- 7 Q Are there wings, butterfly wings?
- 8 A It's not too clear.
- 9 Q It looks like you are having a hard time seeing.
- 10 A I think the wings are here. These are the wings over  
11 here.
- 12 Q Those are the wings?
- 13 A Yes.
- 14 Q I see you wear glasses.
- 15 Do you have a hard time seeing?
- 16 A A little bit, yes.
- 17 Q I will show you what has been marked for  
18 identification as Government's Exhibit 511.
- 19 Do you recognize the child in that picture?
- 20 A Yes.
- 21 Q Who is that child?
- 22 A That is my daughter [REDACTED].
- 23 Q Can you describe what you see?
- 24 A I see like a picture here.
- 25 Q What is that thing on the right there? What does

**Imperiale - Direct/Kabrawala**

622

1 that appear to be, the blue thing?

2 Could it be this (indicating), showing  
3 Government's Exhibit 332?

4 A Yes.

5 Q Now I'm going to show you Government's Exhibit 520  
6 for identification.

7 Is this the same picture, just a smaller version  
8 of it?

9 A I would say yes.

10 Q Who is depicted in the picture?

11 A That's my daughter.

12 Q Government's Exhibit 520, that's your daughter  
13 [REDACTED]?

14 A [REDACTED].

15 Q Government's Exhibit 538 for identification.

16 Who is depicted in that picture?

17 A That I would probably say my daughter, my daughter  
18 [REDACTED].

19 Q And I'll show you one more for now, Government's  
20 Exhibit 539 for ID.

21 Who is depicted in that?

22 A My daughter [REDACTED].

23 Q Do you see this thing in the picture? It's like a  
24 toy gun thing off to the side, to the left side.

25 A Yes.

**Imperiale - Direct/Kabrawala**

623

1 THE COURT: What is that you are holding up?

2 MR. KABRAWALA: Government's Exhibit 333.

3 THE WITNESS: Yes.

4 Q Does this gun appear to be in Government's  
5 Exhibit 539?

6 A Yes.

7 MR. KABRAWALA: I'm going to take these back.

8 Q At some point do you know -- withdrawn.

9 Did your brother ever tell you any of the  
10 photographs of your daughter [REDACTED] were published in any  
11 magazine or advertisement?

12 A Could have been one magazine.

13 Q Did your brother tell you what kind of magazine it  
14 was?

15 A That I don't know.

16 Q Was it Halloween magazine?

17 A Yes.

18 Q It was a Halloween magazine?

19 A Yes.

20 Q And it was a costume in a Halloween magazine?

21 A Yes.

22 Q In fact, did you receive payment from your brother  
23 for that modeling picture?

24 A I did receive payments for my daughter, but I  
25 never -- I didn't deposit it.

**Imperiale - Direct/Kabrawala**

624

1 Q It's a very big courtroom. I'm standing far away.

2 Could you say that again?

3 A I did receive payments for my daughter, but I never  
4 deposited the money or anything like that.

5 Q How much did you receive from your brother for  
6 payment?

7 A It could have been like \$150, something like that.

8 Q But you never deposited the \$150?

9 A No.

10 Q How was it paid to you? Cash? Check? Money order?

11 A It was a money order.

12 Q Do you have any pictures of the modeling shoots that  
13 your brother did involving [REDACTED]?

14 A No, no, I don't.

15 Q Never held on to them?

16 A No, I didn't get any pictures.

17 Q You didn't get any pictures?

18 A No.

19 Q You know, I want to show you one other picture.

20 I'm showing you what has been admitted into  
21 evidence as 329.

22 Who is that?

23 A That's my daughter [REDACTED].

24 Q It's a school picture --

25 A Yes.

**Imperiale - Direct/Kabrawala**

625

1 Q -- of some kind, right?

2 A Yes.

3 Q A portrait?

4 A Yes.

5 Q Do you know how old she was in that picture?

6 What grade?

7 A I would probably say -- probably say about six years  
8 old. She was in kindergarten at six years old.

9 Q Thank you.

10 MR. KABRAWALA: I will just publish it for the  
11 record.

12 Q When you brought [REDACTED] to your brother's house, did  
13 she ever sleep over?

14 A By herself, do you mean?

15 Q Either way. By herself?

16 A No.

17 Q Did she ever sleep over with you?

18 A Yes.

19 Q Did you ever see any hidden cameras in the basement  
20 of Mr. Valerio's home?

21 A No. No.

22 Q I want to just show you a couple of things to see if  
23 that might jog your memory.

24 Is that okay?

25 A Sure.

**Imperiale - Direct/Kabrawala**

626

- 1 Q Showing 323.
- 2 Have you ever seen this before?
- 3 A No. Never saw that.
- 4 Q Showing 324 and 324-A.
- 5 Have you ever seen this box before?
- 6 A No.
- 7 Q What about this clock?
- 8 A That clock, no.
- 9 Q No, never seen this?
- 10 A No.
- 11 Q Didn't see this in the basement in the big
- 12 contraption that I just showed you?
- 13 A No.
- 14 Q I will show you a few more items.
- 15 Showing you Government's Exhibit 338.
- 16 Do you know what this is?
- 17 A Not exactly, no.
- 18 Q What if I told you it was a wig?
- 19 A A wig.
- 20 Q Does it look like a wig?
- 21 A Yes.
- 22 Q Have you ever seen this wig before?
- 23 A No. No.
- 24 Q You mentioned a cheerleader outfit?
- 25 A Yes.



**Imperiale - Direct/Kabrawala**

627

1 Q I'm showing you Government's Exhibit 343 and 342.

2 A Yes.

3 Q Does that look familiar to you?

4 A That is a cheerleader outfit.

5 Q Where did you see this?

6 A It was -- my daughter had it, and it was downstairs.

7 Q In Mr. Valerio's house?

8 A Yes.

9 Q Showing Government's Exhibit 335 and 336.

10 Do you recognize what these are?

11 A Yes, those are -- part of the cheerleading outfits,  
12 the pompoms.

13 Q Do you recognize these pompoms?

14 A Yes.

15 Q Where do you recognize them from?

16 A From my brother's home.

17 Q You saw these in your brother's house?

18 A Yes.

19 Q Did [REDACTED] dress up with these pompoms?

20 A Yes.

21 Q You mentioned that [REDACTED] had modeled for about two  
22 years; is it fair to say?

23 A About two years.

24 Q At some point did she stop modeling for your brother?

25 A Yes, uh-huh.

**Imperiale - Direct/Kabrawala**

628

1 Q Was it because she no longer wanted to do it?

2 A It is because I had figured that her to do a modeling  
3 career, I really didn't want that for my daughter anymore,  
4 and I would prefer her to graduate high school and either  
5 become a nurse or a teacher, a professional job like that.

6 Q Do you know if your brother Joseph has a son?

7 A Yes.

8 Q What is the son's name?

9 A Andre.

10 Q Andre?

11 A Yes.

12 Q A-N-D-R-E?

13 A A-N-D-R-E.

14 Q Who is A [REDACTED]?

15 A A [REDACTED] is my brother's daughter.

16 Q She doesn't live in America, right?

17 A No, she doesn't.

18 Q She lives in South Africa?

19 A Yes.

20 Q With her mother?

21 A With her mother.

22 Q Have you ever met your brother Joseph's girlfriend  
23 named Jarmila Berezovska?

24 A Yes.

25 Q Who met Ms. Berezovska first, you or your brother?

Imperiale - Cross/Lato

629

1 A Jarmila, my brother.

2 Q So it wouldn't be accurate to say that Jarmila came  
3 to take care of your children and that's how she met  
4 Joseph?

5 MR. LATO: Objection to form.

6 THE COURT: Sustained.

7 Q Let me rephrase the question.

8 Did Jarmila come and take care of your kid, come  
9 to this country to take care of your kids before she met  
10 Joseph?

11 A No.

12 MR. KABRAWALA: One moment.

13 Nothing further at this time.

14 THE COURT: Cross-examination?

15 CROSS-EXAMINATION

16 BY MR. LATO:

17 Q Good afternoon, Ms. Imperiale.

18 A Good afternoon.

19 Q You have difficulty seeing?

20 A Yes, I do.

21 Q Do you have glaucoma?

22 A Yes, I do.

23 Q Are you receiving Social Security disability  
24 benefits?

25 A Yes, I am.

Imperiale - Cross/Lato

630

1 Q Showing you Government's Exhibit 323.

2 Can you see what this is from where you are  
3 sitting?

4 A It looks like either a type of box or something like  
5 that.

6 Q Do you recall being asked a question by Mr. Kabrawala  
7 whether you declined to speak with him prior to today? Do  
8 you recall being asked that?

9 A Yes.

10 Q Did you decline to speak with him prior to today?

11 A Yes.

12 Q Did you speak with some members from law enforcement  
13 prior to today?

14 A Yes.

15 Q Did you speak with Special Agent Troyd and Special  
16 Agent Messineo prior to today?

17 A Yes.

18 Q Was [REDACTED] spoken to by law enforcement prior to  
19 today?

20 A Yes, uh-huh.

21 Q Are you here because you have been subpoenaed to  
22 testify?

23 A Yes.

24 Q Was [REDACTED] subpoenaed to testify?

25 A Yes.

**Imperiale - Redirect/Kabrawala**

631

1 Q Had you ever seen Olena Kalichenko in your life?

2 A Just once.

3 Q Did you see her in Mr. Valerio's house?

4 A One time.

5 MR. LATO: No further questions.

6 THE COURT: Any redirect?

7 MR. KABRAWALA: Briefly, Judge.

8 REDIRECT EXAMINATION

9 BY MR. KABRAWALA:

10 Q Olena Kalichenko. Do you remember when you saw her  
11 at Joseph's house, what year that was or how old [REDACTED]  
12 was?

13 A It could have been over the summer. I would probably  
14 say a few years ago.

15 Q A few years ago?

16 A Yes.

17 Q 2012? 2013?

18 A I'm not really sure. I'm not sure.

19 Q And what were the circumstances of meeting her?

20 A You know, he had met her and, you know, we got  
21 together, you know, over my brother's house. And then we  
22 like spent time together, you know, with her. And that  
23 was it.

24 MR. KABRAWALA: Just one moment.

25 Q Did you ever see Olena Kalichenko take modeling

Imperiale - Redirect/Kabrawala

632

1 pictures with [REDACTED]?

2 A We did go downstairs, you know, all of us, and they  
3 were taking pictures. And we had went upstairs, and she  
4 wanted to take more pictures. And we went upstairs to get  
5 something to eat. And that's it.

6 Q When was that -- you were asked about speaking with  
7 Special Agent Troyd of the FBI.

8 Do you remember that?

9 A Yeah.

10 Q You met with Agent Troyd on February 28th of this  
11 year; is that fair to say?

12 A February 28th, I guess so, yes.

13 Q It must have been cold out, February.

14 A Yes.

15 Q Do you remember ever telling him -- withdrawn.

16 Isn't it true that when you met with Special  
17 Agent Troyd and Special Agent Danielle Messineo, you never  
18 mentioned anything about Kalichenko taking pictures with  
19 [REDACTED]?

20 A Yes.

21 Q It's true, right?

22 A Yes.

23 Q The first time you are saying it is today?

24 A Yes.

25 Q You were asked about pictures involving [REDACTED],



Imperiale - Redirect/Kabrawala

633

1 right?

2 A Yes.

3 Q And you described everything you testified to today,  
4 the modeling sessions, the Halloween magazine, the  
5 payments of money, the costumes, the fairy outfit?

6 A Yes.

7 Q But not once did you ever mention the word  
8 "Kalichenko," anything about Kalichenko taking pictures  
9 with [REDACTED]?

10 A Well, I wasn't, you know, asked, you know, about that  
11 at all. I was just really asked about, you know, his wife  
12 and Angelique.

13 Q You were in court when your brother Joseph was first  
14 arrested, right, when you came to sign the bail bond?

15 A Yes.

16 Q You heard the charges against him being read in  
17 court?

18 A Yes.

19 Q At that time it never occurred to you, even though  
20 you had spoken with agents, to tell anyone that Kalichenko  
21 had taken pictures of [REDACTED]?

22 MR. LATO: Objection.

23 THE COURT: Sustained as to form.

24 A Well --

25 THE COURT: You don't have to answer it,

**Imperiale - Recross/Lato**

634

1 Ms. Imperiale, when I sustain an objection.

2 BY MR. KABRAWALA:

3 Q So what you are telling us today for the first time,  
4 your story today is that Kalichenko, sometime in the  
5 summer, took pictures of [REDACTED]?

6 A Yes.

7 MR. LATO: Objection to the characterization of  
8 "story." It's summation arguments.

9 THE COURT: Overruled.

10 Q I'm sorry, what was the answer to that?

11 A Yes, it was one time, yes.

12 Q In the summer?

13 A Yes.

14 Q Once?

15 A Yes.

16 Q And that was sometime -- withdrawn.

17 And that was the summer when Kalichenko was here  
18 and you saw her here?

19 A Yes.

20 MR. KABRAWALA: Nothing further.

21 RECCROSS-EXAMINATION

22 BY MR. LATO:

23 Q Prior to today, did any law enforcement officer ever  
24 ask you about Olena Kalichenko?

25 A No.

Proceedings

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1 MR. LATO: No further questions.

2 THE COURT: You can step down.

3 Anything further from the Government?

4 MR. KABRAWALA: Nothing further.

5 THE COURT: You may step down, Ms. Imperiale.

6 MR. BODE: Your Honor, we need to set up for the  
7 next witness.

8 THE COURT: We'll take a lunch break now.

9 (Whereupon, at this time the jury exits the  
10 courtroom.)

11 THE COURT: With respect to your next witness,  
12 it's the expert?

13 MR. KABRAWALA: He's actually a quasi-fact  
14 expert and --

15 MR. BODE: Pardon me, your Honor.

16 MR. KABRAWALA: Mr. Bode will address that.

17 MR. BODE: Detective Forrestal is present --  
18 actually, I'll wait for a moment, your Honor.

19 Your Honor, Detective Forrestal is -- your  
20 Honor, was present at the scene of the search and present  
21 for the interview. He's into computer forensics here, so  
22 he's testifying as to both a fact and expert witness.

23 We'll ask that your Honor give an instruction  
24 when we do the changeover. He will testify first about  
25 factual matters, and he'll change over to the expert

## Proceedings

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1 testimony.

2 So the record is very clear and there is no  
3 issue on appeal, we have a suggested instruction what the  
4 Court may do at that transition time, and we'd ask the  
5 Court at the time when he's deemed an expert to make very  
6 clear to the jury that he'll now be testifying in an  
7 expert capacity, as set forth in our suggested  
8 instruction.

9 THE COURT: What does the defense think of the  
10 instruction?

11 MR. LATO: One minor modification of the  
12 request.

13 Since it is up to the jury to determine whether  
14 Detective Forrestal is in fact an expert, we ask only that  
15 you say he's now being offered as an expert as opposed to  
16 the Court saying he is in fact an expert.

17 MR. BODE: That's fine, your Honor.

18 THE COURT: So I'll say he's now being offered  
19 as an expert witness?

20 MR. LATO: Yes. Thank you.

21 THE COURT: Okay. So I'll give that  
22 instruction.

23 Are there any other issues with respect to this  
24 witness then?

25 MR. KABRAWALA: No, Judge.

Proceedings

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1 THE COURT: Any exhibits coming in?

2 MR. KABRAWALA: There will be a number of  
3 exhibits that come through Detective Forrestal. I believe  
4 what they are are portions of a report that he prepared  
5 after reviewing the cell phone that was seized from the  
6 defendant.

7 Also, portions of a presentation, a PowerPoint  
8 presentation exhibit, that he created in his capacity as  
9 an expert to show where the images were located on the  
10 computer that was seized from the defendant, and also  
11 images that were recovered from the memory card that was  
12 seized from the defendant's house.

13 So we've given those over to the defense. We  
14 have given that -- redacted copies to the Court, and we've  
15 provided the defense and updated the Court's binder with  
16 additional exhibits that we found last night.

17 THE COURT: Does the defense expect any  
18 objections to these exhibits?

19 MR. LAPINTA: Let me address the issues  
20 regarding the offer of the report.

21 Obviously, we have the report -- I'm sorry. No  
22 objection about anything.

23 THE COURT: All right. I'll see you at 1:30.

24 Have a good lunch.

25 (Whereupon, a recess was taken.)

Proceedings

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A F T E R N O O N      S E S S I O N

(Whereupon, the following takes place in the absence of the jury.)

THE COURT: Please be seated.

Are we ready?

MR. KABRAWALA: Yes, Judge.

THE COURT: Bring the jury.

MR. KABRAWALA: Your Honor, I have given defense a copy of Government's Exhibit 270. The copy your Honor has is different from this exhibit. And I want to give the Court the updated copy that will be introduced.

(Handed to the Court.)

MR. KABRAWALA: If you would like to discard or recycle.

THE CLERK: Jury is entering.

(Whereupon, the jury at this time entered the courtroom.)

THE COURT: Will everybody be seated.

I will ask the government to call its next witness.

MR. KABRAWALA: The United States calls Rory Forrestal.

THE COURT: Come up to the witness stand, sir, and remain standing once you get there.



**Forrestal-Direct/Kabrawala**

639

1 THE CLERK: Please raise your right hand.

2

3 R O R Y F O R R E S T A L,

4 called as a witness, having been first

5 duly sworn, was examined and testified

6 as follows:

7 THE CLERK: Please state and spell your name for  
8 the record.

9 THE WITNESS: My name is Detective Rory,  
10 R-O-R-Y, F-O-R-R-E-S-T-A-L, and the shield is 884,  
11 employed by the Suffolk County Police Department.

12 THE COURT: Detective, as you are doing, lean  
13 forward to keep your voice up.

14 Go ahead, Mr. Kabrawala.

15

16 DIRECT EXAMINATION

17 BY MR. KABRAWALA:

18 Q Good afternoon.

19 A Good afternoon.

20 Q You mentioned where you work, but where do you work?

21 A Yes. I work for the Suffolk County Police  
22 Department.

23 Q How long have you worked at the Suffolk County Police  
24 Department?

25 A I have been employed by them for 30 years.

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1 Q 30 years?

2 A Yes.

3 Q What is your current rank?

4 A A detective.

5 Q And can you please briefly describe the history of  
6 your duties and responsibilities over the 30-year career  
7 you have had with the Suffolk County Police Department?

8 A Everybody in the police department kind of starts out  
9 the same way. I was hired as a patrolman. You go through  
10 the academy, and then I was assigned to the Fifth Precinct  
11 as a patrol officer for five years. I was recruited to  
12 the narcotic section after those five years, and I served  
13 there for an additional five years as an undercover  
14 officer. And I was partially recruited and I had some  
15 computer experience in the military, and I helped them  
16 install an intelligence database in the office.

17 Now, I served there for five years. I made  
18 detective while I was in narcotics. And then I asked for  
19 and was granted leave to join the Sixth Precinct detective  
20 squad. In a precinct the detectives is kind of basically  
21 where you learn your craft. You handle all kinds of  
22 cases, evidence handling, taking statements from the  
23 witnesses, you handle a complete spectrum of crimes,  
24 robberies, rapes, murders, etcetera.

25 In 1991 I was serving in the seventh squad as a

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1 detective, and I was recruited by the then chief of  
2 detectives, Thomas Murphy, to come to the chief of  
3 detective's office to explore the establishment of a  
4 computer crimes unit. There wasn't one yet established  
5 inside the police department. And he wanted me to do some  
6 demonstration cases and some research to determine whether  
7 we should establish one and what format it should take and  
8 what-not.

9 I was transferred to his office and I worked  
10 under the shield of the chief of detectives office for two  
11 years, and the unit was formally established in 2001 as  
12 the computer crimes unit. I have served there coming on  
13 15 years ever since.

14 Q And the computer crime unit -- you mentioned it was  
15 first founded. But did it exist before you participated  
16 in it?

17 A There was a shell unit that they called the crime  
18 analysis, and they did minor forensic jobs, forensic jobs,  
19 and they didn't formally establish a computer crime unit,  
20 one that encompassed all the areas it encompasses now.

21 Q What role, if any, did you play in the establishment  
22 of the computer crimes unit in the Suffolk County Police  
23 Department?

24 A Along with demonstration cases, I wrote a series of  
25 proposals, visited other units, looked pretty much across

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1 the country to determine what everybody else was doing,  
2 and then made recommendations to the chief of detectives  
3 about what format the unit should take.

4 Q Are you currently assigned to the computer crimes  
5 unit?

6 A I am.

7 Q How long have you been in that unit?

8 A 2001, at least 15 years.

9 Q Are you cross-designated as an officer in any other  
10 law enforcement agency?

11 A Yes, a task force officer with the Long Island  
12 Exploited Children's Task Force, run by the FBI.

13 Q How long have you been employed by the Long Island  
14 Exploited Children's Task Force with the FBI?

15 A It has been in various forms over the last five years  
16 formally. Actually, informally I was doing the same  
17 mission since 2005.

18 Q What is the mission of the Long Island Child  
19 Exploitation Task Force?

20 A What the Long Island Exploited Children's Task Force  
21 does is it brings officers from other agencies, together  
22 with FBI agencies, it is a force multiply. We have  
23 different skills and assets that we bring to the table.  
24 And the idea is basically to establish proactive  
25 investigative cases involving child pornography, child sex

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1 trafficking, on-line offenders that might be approaching  
2 children. That sort of crime.

3 Q As a detective in the computer crime unit, can you  
4 generally describe your duties and responsibilities?

5 A My department is a dual function part, world training  
6 forensically, so we conduct forensic examinations on  
7 seized computers, digital computer of any kind, hard  
8 drive, camera, disk.

9 We also conduct general computer crime  
10 investigations. You might know it as hacking and that  
11 sort of crime that are sometimes facilitated by the use of  
12 a computer.

13 We also have as part of our mission statement  
14 our task with proactively developing exploited children's  
15 cases. Again, we do on-line chats or on-line offenders.

16 We investigate crimes with actual victims rather  
17 than the undercover mission, where adults may be  
18 approaching children to engage in sexual acts and take  
19 inappropriate pictures.

20 Q You mentioned the term computer forensics. What does  
21 that mean?

22 A Computer forensics is the discipline, or sometimes it  
23 is said it is the science of extracting information or  
24 data or evidence from various kinds of digital media,  
25 computers, hard drives, even the little SD disk you might

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1 see in cameras and cell phones. Any kind of digital media  
2 at all. And it is an established way of getting  
3 information out of all these items in a way that is  
4 acceptable to the Court.

5 Q Have you over your many years and experience received  
6 any training in the area of computers and, if so, please  
7 generally describe the categories of training you received  
8 in computers?

9 A Everybody that comes of the computer forensics  
10 business starting out, we all kind of start the same way.  
11 We take a basic data and recovery analysis course which is  
12 the very basic level of computer course and forensics that  
13 is given by a group sponsored by the Department of Justice  
14 called NW3C.

15 Q That is a training course?

16 A A training course, yes. That is usually followed up  
17 with advanced data in recovery analysis, which is another  
18 week of training regarding seizure, proper seizure and  
19 analysis of digital media.

20 I also took an FBI course called NNSI training.

21 Q What is that?

22 A National infrastructure of training in which they ran  
23 a computer hacking training, I guess you call it, on how  
24 to investigate network protrusions, hacking cases and that  
25 kind of a spiraling case.

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1 Over the course of the years I have taken  
2 numerous courses in the various software we use in our  
3 office, and in particular EnCase training, which is a kind  
4 of forensic software we use in our office, and I have  
5 attended their trainings.

6 We have attended FTK training, which is a  
7 Forensic Tool Kit, and that is another commercial vendor  
8 of software that also provides training in various areas  
9 of forensics.

10 Q We will return to FTK and EnCase.

11 Have you ever taught any computer courses or the  
12 like?

13 A I don't do specifically forensic courses. I give  
14 continuing education training to the District Attorney's  
15 Office, actually a number of bar association presentations  
16 over the years over digital media and how it interfaces  
17 with evidence.

18 I teach basic recruiting level, basic advanced  
19 computer investigations training at the Police Academy.  
20 And I have watched it pretty much all over the northeast  
21 in the same subjects.

22 Q Is it fair to say -- withdrawn.

23 Is it fair to say that you keep up-to-date with  
24 the subject matter of computer forensics, and you  
25 regularly attend courses?



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1 A Usually once or twice a year we try to attend one of  
2 the trainings.

3 Throughout the country there is a number of  
4 organizations and task forces and what-not that host  
5 five-day training seminars, and then you go for five days  
6 and then you have various subjects you can select from.  
7 And you attend them and attend or select a half a day or a  
8 day training in a specific area that is either new or you  
9 want to refresh in or new software being deployed.

10 We also belong to various Listserves, is what  
11 they are called.

12 What they are is being involved in the forensic  
13 areas, they are email groups, a large body of groups of  
14 forensic people, computer crime investigators and  
15 what-not. And as new things are seen and questions arise,  
16 you would post different items to the Listserve and it  
17 keeps you up to speed in the industry.

18 Q How long do you -- how often do you employ computer  
19 forensics in your day-to-day practice in the computer  
20 crime unit?

21 A Computer and cell phone forensics, pretty much every  
22 day.

23 Q And is it fair to say that part of your job as a  
24 detective in the computer crimes unit is to extract  
25 information from computers, cell phones and the like, in

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1 connection with criminal investigations?

2 A Yes, it is.

3 Q Approximately -- can you estimate approximately how  
4 many computer devices -- when I say that, I also mean cell  
5 phones, that forensically you examined during your law  
6 enforcement career?

7 A Just thinking about it, probably about 500 large  
8 forensic jobs involving computers.

9 Cell phone is much more and smaller jobs but  
10 just as important. And I have probably done, since 2007,  
11 eight to nine hundred cell phones at least.

12 Q Now, before we talk about any involvement in this  
13 case, I want to generally go over in context, generally  
14 speaking, when you examine a computer, and we are  
15 referring to a computer and not cell phones, what do you  
16 do? Can you generally walk us through what you do when  
17 you receive a computer?

18 A If we have already received a computer, we have a  
19 general procedure for processing it into evidence in our  
20 office. We complete certain forms and then we log it or  
21 lodge it into our computer crimes evidence room.  
22 Whichever analyst has shelf area where they keep the  
23 evidence.

24 When we do the analysis, we remove it to the --  
25 from the room and take it to a workbench area and complete

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1 a hardware acquisition work sheet.

2 After that we take it to the workbench. We  
3 complete that form and note the model, the serial number,  
4 the condition of the actual unit.

5 Then we actually dismantle it, take the sides  
6 off of it and decide what storage is inside, storage media  
7 inside, and analyze it.

8 Q When you say storage media, what kind of example is  
9 that?

10 A Hard drive. Generally speaking, when you are working  
11 with a computer -- although anything is storage media,  
12 little SD cards, whatever, and we generally speak of a  
13 computer hard drive, which is storage media where the  
14 information is kept.

15 We actually open up the case of the computer and  
16 remove the hard drive. We take the hard drive out and  
17 note the condition. We note where we took it from. And  
18 you actually take it to a copy machine and make a copy of  
19 the face of it. So we know the model, the hard drive, the  
20 serial number and what-not.

21 That hard drive is then taken to our forensic  
22 work station where we have a forensic computer that we  
23 work with containing software and tools, and it has  
24 different hardware that we use in conjunction with that.  
25 And we attach it -- attach that hard drive to basically

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1 what is called a write block.

2 What a write block does is it prevents any  
3 information whatsoever, even if you made a mistake from  
4 data, from being written over that hard drive. So that  
5 way that original piece of evidence came out of the  
6 computer always remains pristine. Nothing is ever altered  
7 or changed. Even if you make a mistake, it couldn't --  
8 because it is on a write block.

9 Then you do what is called making a forensic  
10 image. We use our forensic image attached to the write  
11 block and we start the process called imaging. And that  
12 is software that we use. There are a couple of different  
13 things you can use. It is software that is now going to  
14 go to that hard drive and going to make a bit by bit,  
15 every piece of information on that original hard drive,  
16 and it is going to make an exact copy of it. It is going  
17 to put everything exactly where it was. Whether it means  
18 anything or not. It is going to make an exact copy that  
19 is called a forensic image.

20 The forensic image is what you are conducting an  
21 examination of. You don't conduct the examination of the  
22 original. You look at the copy, and that is where we  
23 apply the forensic tools.

24 Q How do you know that it is an exact copy of whatever  
25 hard drive you were copying?

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1 A There is a concept in computer forensics called  
2 hashing, and what a hash is, a numerical number, a  
3 complicated mathematical formula.

4 The hard drive is made up of a bunch of storage  
5 products that basically are made up of zeros and ones, and  
6 you put those zeros and ones together in certain sequences  
7 and it would make a color or a file or a word or a piece  
8 of information.

9 What this hashing formula does is goes in and  
10 adds up all the zeros and ones in a very complex formula  
11 and divides all those numbers and multiplies in formulas  
12 and comes up with what essentially is a digital  
13 fingerprint, or digital DNA number for that hard drive,  
14 all that information.

15 It now goes and does the same thing with the  
16 image you made. And if you get a match, it is a billion  
17 to one -- actually, multibillions to one that there could  
18 be some kind of image or match.

19 Basically it is saying this is a digital  
20 fingerprint of that and if that number matches, it is  
21 exact.

22 Q Do you use different programs on different computers?

23 A I do.

24 Q Have you received any certification -- withdrawn.

25 Are you familiar with the -- well, you testified

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1 about EnCase?

2 A Yes.

3 Q What is EnCase?

4 A EnCase is a commercial suite of forensic tools  
5 designed to let you conduct forensic examinations. It is  
6 a commercial company, guidance software. And it has been  
7 around for quite a while and used very widely in our  
8 district. It gives you tools to look at that information,  
9 to organize the information. You can search it for terms.  
10 You can search it for files. You can search it for  
11 pictures. It gives you all those tools to make the job  
12 easier that we used to do manually.

13 Q So EnCase is a commercially available product?

14 A Yes.

15 Q Is it only available to law enforcement?

16 A No. Also available commercially. Throughout the  
17 world it is used.

18 Q Now, are you certified in EnCase?

19 A No, I'm not.

20 Q How do you become certified in EnCase or one become  
21 certified in EnCase?

22 A After you take the course and training, you are  
23 offered the opportunity to actually pay a fee and take a  
24 test and do additional training. And I chose not to do  
25 that.

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1 Q And part of that certification process, would you  
2 need to recertify and repay a fee?

3 A Yes.

4 Of course, that is over the entire spectrum of  
5 all the software you use.

6 Q Fair to say you use a lot of software?

7 A Yes.

8 Q Who pays the initial fees in your case?

9 A The Suffolk County Police Department.

10 Q They would pay?

11 A Yes.

12 Q And who would pay the renewal fees in your case?

13 A Sorry?

14 Q Who would pay any renewal fees in your case?

15 A We would hope the police department would do that,  
16 but they don't.

17 Q How long have you been using EnCase?

18 A I have been using EnCase since it was initially  
19 before the industry in roughly 2000 is the first variation  
20 of the product.

21 Q Can you describe how you first came to use EnCase?

22 A Our office at the time, the industry was just kind of  
23 being established. Everybody was using different tools,  
24 and forensics was just starting to be a big thing in the  
25 computer world. All of us were using all these little



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1 individualized tools that different investigators actually  
2 made to be able to get to do these things.

3 Guidance Software came up and actually put a  
4 suite of tools together in one place. And we heard about  
5 it through the Listserve and what-not.

6 We contacted the company and asked them for an  
7 evaluation copy and they gave it to us.

8 Q When you first started using EnCase, was it  
9 commercially available?

10 A It was just starting to be commercially deployed.  
11 But it was basically out in a beta version it is called or  
12 a test version.

13 Q And you were one of the testers of the EnCase?

14 A Yes. We were one of the beta testers, members in our  
15 office.

16 Q And I note you are also a detective in addition to  
17 having experience in the computer forensics.

18 Have you ever conducted any search warrants?

19 A Yes.

20 Q Approximately how many in your career?

21 A It is well in excess -- my personal actual swearing  
22 as to a search warrant, it has to be 200 plus. And then  
23 actually attending other individuals in our office who had  
24 executed search warrants given to me by others, probably  
25 about 150, 200.

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1 Q Have you conducted any search warrant in your career  
2 in connection with child exploitation or child pornography  
3 case?

4 A The majority of warrants I have been involved with  
5 are child pornography warrants.

6 Q Have you ever taken statements from criminal  
7 defendants in connection with your duties as a detective?

8 A I have.

9 Q Throughout your career?

10 A Yes.

11 Q You have?

12 A Yes.

13 Q How many would you say over your entire career?

14 A It has to be in the hundreds for child pornography  
15 alone, it has to be in the hundreds.

16 Q I want to draw your attention to January 2012 --  
17 2014, earlier this year.

18 Were you contacted by any law enforcement agency  
19 or officers with whom you work generally?

20 A Yes, I was. I was contacted by Special Agent  
21 Danielle Messineo and Special Agent Steven Troyd regarding  
22 an investigation.

23 Q Were you asked to help them conduct a search warrant?

24 A Yes, I was.

25 Q Did you in fact help them conduct the search warrant?

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1 A I did.

2 Q Was it your investigation that you helped them  
3 conduct a search warrant on?

4 A No. I was not the lead in the investigation.

5 Q Was it a Suffolk County Police Department case?

6 A No. It was an FBI case.

7 Q Now, prior to the FBI agent contacting you, did you  
8 know anything at all about that particular investigation?

9 A I knew cursory amount of information, you know, just  
10 the basic thumbnail sketch of what the investigation was  
11 about.

12 Q Before they contacted you?

13 A No, not before.

14 Q Before they contacted you, you had no idea?

15 A No.

16 Q So it wasn't your investigation?

17 A Correct.

18 Q I want to draw your attention now to later in the  
19 month, to January 28th, 2014.

20 Did you in fact assist the FBI in conducting a  
21 search warrant at 3 High Gate Drive in Smithtown, New  
22 York?

23 A I did.

24 Q What was your goal that day?

25 A I was to assist in the seizure -- evaluation, seizure

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1 and then eventually the forensic analysis of the seized  
2 and digital media taken from the location.

3 Q Now, did there come a time you actually arrived at  
4 the house?

5 A Yes.

6 Q Now, in connection with your role in evaluating and  
7 seizing and then evaluating the computer equipment, what  
8 did you do when you got to the house? Did you go right to  
9 the computer?

10 A Yes. I took a tour of the entire scene upstairs and  
11 downstairs, just to see what computer equipment was  
12 readily apparent.

13 Q Did you enter immediately when other officers entered  
14 initially into the house?

15 A No.

16 Q When did you come approximately?

17 A We -- when we got the all secure sign that someone  
18 came to the front door and we entered then.

19 Q What do you mean by all secure?

20 A Just they secured the residence, to search the  
21 initial people through the door, and they advised that the  
22 house was secure before we came in.

23 Q Did you find any computers in the house?

24 A There were numerous computers.

25 Q Were they on or off?

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1 A All the ones I observed were off.

2 Q Would it matter if they were on or off?

3 A It would.

4 Q Why is that?

5 A If the computer is on it has to be handled in a  
6 particular way. If it is off you basically package it up  
7 and bring it back to the office to do your evaluation.

8 If it is on, you have to evaluate other  
9 important programs that are running. Something displayed  
10 on screen may need to be photographed.

11 Sometimes computers are very complex to be set  
12 up, when you pull the power all the information on it  
13 encrypts, so literally while it is powered up if you don't  
14 make certain moves you will never come into the computer.

15 Q Encrypts is like blocking?

16 A It is basically a program called bit locking, which  
17 is a Windows product which says basically you will never  
18 get into it again.

19 Q You said it sometimes happens in a complex scene.  
20 Was this a complex scene?

21 A From the perspective of the computers that were out  
22 and visible, it was not complex, no.

23 Q Now, at some point after you surveyed the computers  
24 and seized them, did you participate in an interview of a  
25 man by the name of Joseph Valerio?

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1 A I did.

2 Q By the way, do you see Joseph Valerio sitting here  
3 today?

4 A I do.

5 Q Point him out, please.

6 A The gentleman right here wearing a brown jacket and a  
7 black pattern tie.

8 MR. KABRAWALA: Let the record reflect that the  
9 witness identified the defendant.

10 THE COURT: Yes.

11 Q Now, I'm showing you what is admitted as  
12 Government's Exhibit 302.

13 MR. KABRAWALA: Publishing.

14 (At this time a document was exhibited on the  
15 courtroom screen.)

16 Q Is this where you and other law enforcement officers  
17 met with the defendant?

18 A Yes.

19 Q Was the defendant handcuffed?

20 A No.

21 Q Was he restrained in any way?

22 A No.

23 Q Did you see anyone at any point draw any weapons  
24 while they were in the house?

25 A No.

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1 Q Did you see anyone draw weapons at the defendant?

2 A No.

3 Q Did anyone restrain the defendant, hold him down?

4 A No.

5 Q Did anyone raise their voices at the defendant?

6 A No.

7 Q Did you raise your voice at the defendant?

8 A No.

9 Q So did the defendant admit that he directed Olena  
10 Kalichenko to produce child pornography with her daughter?

11 A Yes.

12 MR. LaPINTA: Objection.

13 THE COURT: Sustained. Sustained as to form.

14 Q What, if anything, did the defendant admit?

15 MR. LaPINTA: Objection.

16 THE COURT: Sustained as to form.

17 Q What, if anything, did the defendant say during the  
18 interview in general to you?

19 A In general he stated that Olena Kalichenko -- that he  
20 directed her to reach out and make child pornography  
21 images of her daughter.

22 Q Did he say he received those images?

23 A He did.

24 Q What did he say?

25 A Specifically, I don't remember specifically what he



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1 said. But I do remember him admitting that he received  
2 the child pornographic videos from her.

3 And then the other thing I specifically recall  
4 him saying is that he did receive a DHL, DVU, quote,  
5 unquote.

6 Q He claimed that the DHL package was empty?

7 MR. LaPINTA: Objection to the form of the  
8 question.

9 MR. KABRAWALA: Withdrawn.

10 THE COURT: Sustained.

11 Q Do you recall the defendant being Mirandized, that  
12 is, being advised of his rights?

13 A I do.

14 Q Showing you what is admitted as 304,  
15 Government's Exhibit 304, do you recognize this document?

16 (At this time a document was exhibited on  
17 courtroom screen.)

18 A Yes.

19 Q This is an advice of rights form?

20 A It is.

21 Q Is your signature on it?

22 A It is.

23 Q Did you witness this being signed by the defendant?

24 A I did.

25 Q Did he waive his rights and agree to speak to law

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1 enforcement?

2 MR. LATO: Objection.

3 THE COURT: Sustained as to form.

4 MR. KABRAWALA: I will move on. The document is  
5 in evidence.

6 Q Now, you testified earlier about your experience in  
7 computer forensics.

8 Have you previously been qualified as an expert  
9 in computer forensics?

10 A I have.

11 Q What court?

12 A In this court here, actually, the Eastern District,  
13 in 2005 in U.S. v. Wernick.

14 Q Which judge was that?

15 A Judge Hurley.

16 Q Down the hall?

17 A Yes.

18 I was qualified in Brooklyn Federal Court, Judge  
19 Weinstein. And that was in, I think, 2009 or '10.

20 Across the bridge was qualified as an expert in  
21 computer crimes investigations.

22 Q Manhattan Federal Court?

23 A Manhattan Federal Court.

24 Recently in April, State Court, the People of  
25 the State of New York versus Sparagano. And that was in

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1 State Court in April.

2 Q Recently?

3 A Yes. It was a child pornography trial. Recently,  
4 yes.

5 MR. KABRAWALA: The government moves to qualify  
6 detective Rory Forrestal as an expert in computer  
7 forensics.

8 MR. LATO: No objection to him giving an opinion  
9 about his expertise and leaving it to the jury as to  
10 whether in fact he is.

11 THE COURT: Obviously the jury is tasked with  
12 finding whether a witness is qualified with respect to  
13 what is called expert testimony. The Court allows him to  
14 offer an opinion, but it is up to the jury to evaluate  
15 that testimony.

16 I wish to give you an instruction, but I will  
17 speak to the lawyers for a moment.

18  
19 (Whereupon, at this time the following took  
20 place at the sidebar.)

21 THE COURT: The government had offered this  
22 instruction.

23 I pulled up what I normally use and give at the  
24 end of the case and propose to use this instead. And I  
25 will give you guys a chance to look at it.

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1 MR. KABRAWALA: I will read over your shoulder.

2 That is good, that is fine.

3 MR. LaPINTA: Good.

4 MR. KABRAWALA: Thank you, Judge.

5 THE COURT: Here is the second page.

6 MR. KABRAWALA: Yes.

7 MR. LATO: Agreed.

8 MR. KABRAWALA: Thank you, Judge.

9

10 (Whereupon, at this time the following takes  
11 place in open court.)

12 THE COURT: Members of the jury, let me give you  
13 an instruction regarding testimony that one goes with one  
14 side offering expert testimony. I will give you the  
15 instruction at the end of the case, but I will give it to  
16 you now so you can have it now as well.

17 Detective Rory Forrestal at this point has  
18 testified as a fact witness. He is now being offered as  
19 an expert witness by the government.

20 Each of these types of testimony, fact witness  
21 testimony and expert witness testimony, may be considered  
22 by you.

23 I would like to give you an additional  
24 instruction with regard to witnesses offered as expert  
25 witnesses.

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1           If scientific, technical or other specialized  
2 knowledge will assist the jury in understanding evidence  
3 which decides a disputed fact, a witness with a particular  
4 knowledge, skill, experience, training or education may be  
5 called to testify about such evidence or facts in issue in  
6 the form of an opinion.

7           The rules of evidence ordinarily do not permit  
8 witnesses to testify to opinions or conclusions. And  
9 exceptions of this rule exist to those being called as  
10 quote, unquote, expert witnesses, who may state their  
11 opinions and who may also state the reasons for their  
12 opinions.

13           You should consider the witness' opinion  
14 received in this case and give it such weight as you may  
15 think it deserves. You are not obligated to accept the  
16 expert's testimony as truth. If you should decide that  
17 the opinion of the witness is not based on sufficient  
18 education and experience, or that the reasons given in  
19 support of the opinion is not sound or if the opinion is  
20 outweighed by other evidence, you may disregard the  
21 opinion entirely.

22           In sum, the expert witness is in all other  
23 respects the same as any other witness. You should  
24 consider his or her qualifications, his or her experience,  
25 his or her interest in the outcome of the case, if any,

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1 his or her demeanor, and all the other factors that at the  
2 end of the case I will instruct you to consider in  
3 assessing the credibility of other witnesses.

4 With that instruction we will now continue.

5 MR. KABRAWALA: Thank you, your Honor.

6 Q While you were at the search on January 28th, 2014 of  
7 the defendant's house, did you seize any computers or cell  
8 phones?

9 A The agents found the computers in various rooms and  
10 they were photographed and brought to me. And I did a  
11 complete tour of the scene to make sure that everything  
12 was -- that had some sort of storage capacity and would  
13 have been involved in a forensic case was actually taken.

14 Q Did you take custody of them?

15 A I did.

16 Q Did you bring them back to your laboratory?

17 A I did not.

18 Q Showing you what is in evidence as  
19 Government's Exhibit 402, an LG My Touch T-Mobile cell  
20 phone.

21 (Handed to the witness.)

22 Q Is that one of the items that you took custody of?

23 A Yes.

24 Q And did you conduct your forensic analysis on this  
25 device?

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1 A We don't call it a cell phone analysis, forensic  
2 analysis, we call it a cell phone extraction, which is a  
3 different analysis. We did extract the data.

4 Q My apology.

5 How did you go about conducting that cell phone  
6 extraction?

7 A Cell phones work a little bit differently. Although  
8 we process them in our office the same, we complete a cell  
9 phone worksheet, a cell phone worksheet that notes the  
10 condition, the type, the make, the model, who is doing the  
11 extraction on the unit.

12 We actually take the unit apart.

13 We remove the battery and note the details  
14 inside. I placed my initials on the inside. That way I  
15 can later identify the unit.

16 We take the unit and use what is called a  
17 Cellebrite, C-E-L-L-E-B-R-I-T-E.

18 Q So you take the battery cover off, if I can figure  
19 out how to do it?

20 A You go to the back like this and flip the battery  
21 out.

22 Q I want to take this back and put it on the projector.

23 A Yes.

24 Q It appears that there are in fact initials on it.

25 (At this time a document was exhibited on



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1 courtroom screen.)

2 Q Are those your initials?

3 A Yes. They are.

4 Q And that is how you know that this is the cell phone  
5 in question?

6 A Yes.

7 Q By the way, where does it say that this was made?

8 A It should say on the tag, and it does. It says it  
9 was made in Korea.

10 Q Korea.

11 Where is this little battery made?

12 A Made in China.

13 Q China.

14 You mentioned Cellebrite.

15 What goes through the process of the Cellebrite  
16 analysis?

17 A The cell phone extraction tool is a box, which is  
18 used in this particular case. It is literally a miniature  
19 computer that has software and hardware installed in it,  
20 and it enables it to attach and extract all the data  
21 stored inside this cell phone.

22 Also from the SIM card installed, there is a  
23 little card inside that has data on it that the telephone  
24 company uses.

25 Then if there was any small storage cards, they

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1 sometimes come with it and we also extract the data from  
2 that.

3 Every one of these has a different connection.  
4 It enables to connect to it in a different way. They give  
5 you a couple of hundred different cables you can attach to  
6 it. And it gives different selections on options on the  
7 couple of different ways to extract data from these  
8 things. It gives you a couple of options to get the best  
9 result.

10 Q What kind of information is extracted from this cell  
11 phone using Cellebrite?

12 A From this specific unit I did a physical extraction  
13 that gets all it can at that particular time that the  
14 software allows. It gets text messages, also known as SMS  
15 messages; MMS messages, which are multisystem messages,  
16 which contain pictures and what-not attached to it in a  
17 text message format. It has location data, stored  
18 pictures, if there are any videos available.

19 Whatever you can see on the cell phone,  
20 generally speaking, except a few categories, it will  
21 catch.

22 Q Did you find any child pornography images on that  
23 cell phone?

24 A No, I did not.

25 Q Now, what is Cellebrite, this forensic tool, what

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1 does it produce at the end of doing whatever it does?

2 A Following the extraction process, you would bring it  
3 back to your forensic computer. And Cellebrite has  
4 software you would then use which lets you open that  
5 extraction, and it categorizes these different data pieces  
6 that you have extracted from there, organizes them, and  
7 then gives you the option to produce reports in different  
8 formats.

9 Q So can you see, for example, just all the photos that  
10 were on the cell phone?

11 A Correct.

12 Q Can you see all the videos that were on the cell  
13 phone?

14 A Correct.

15 Q Can you see an email on the cell phone?

16 A In this particular case there weren't any emails  
17 extracted.

18 Q Did you see any cell phone text messages?

19 A Yes.

20 Q And was there a report generated?

21 A Yes.

22 Q And as part of that report, can you lay out  
23 everything that happened in a timeline?

24 A It automatically does it if you do a full report.  
25 And you can basically select it specifically. You can

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1 just go out and select a timeline report if you want.

2 Q Can you describe what a timeline is, since we have  
3 not seen the report yet?

4 A The timeline report basically gets all those  
5 different categories. When it organizes the information  
6 to be analyzed, it actually separates it by text messages,  
7 by call log, by location, by whatever.

8 What timeline does is, it takes all the  
9 different categories and combines it in one spot and  
10 organizes it chronologically.

11 Q Showing you what is marked as  
12 Government's Exhibit 270 -- withdrawn.

13 The report that it produces, or the report  
14 produced for this phone, is it fair to say that it was a  
15 couple of thousand pages?

16 A About 2,200.

17 Q 2,200 pages?

18 A Yes.

19 Q I'm showing you ten pages which are collectively  
20 Government's Exhibit 270.

21 (Handed to the witness.)

22 Q Do you recognize that?

23 A At the top of it is the bottom part of the  
24 extraction. It looks like the very beginning of the  
25 timeline report and follows through.

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1 Q And is it fair to say that those are selected pages  
2 of this 2,200 page report?

3 A Correct.

4 Q Pages starting at -- withdrawn.

5 Did you produce the report using the forensic  
6 tool Cellebrite?

7 A I completed a complete report, the whole report. I  
8 used that, yes.

9 Q You produced a complete report and this is a portion  
10 of that complete report?

11 A Right.

12 MR. KABRAWALA: The government moves to admit  
13 Exhibit 270.

14 MR. LATO: No objection.

15 THE COURT: 270 is admitted.

16 (Whereupon, Government's Exhibit 270 was  
17 received in evidence.)

18 MR. KABRAWALA: And I'm going to publish the  
19 first page of Government's Exhibit 270.

20 (At this time a document was exhibited on  
21 courtroom screen.)

22 Q Look at the first row where it says number one. What  
23 does that tell you, number one? What does that row of  
24 information tell you?

25 A I have to talk loud, I'm moving away from there.

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1           The first column is type. And it shows what  
2           type of entry it was, whether it was a text message, a  
3           call log entry, and also a little arrow showing the  
4           direction of incoming or outgoing.

5           The next column is time stamp.

6           The party indicating where it came from.

7           The description would be, if it was a text  
8           message, we would have the text there. If it was a call,  
9           it would just say call.

10          Down here if it was a lat long, it would  
11          indicate it there. And then the next column if it was  
12          deleted, it would indicate it was deleted.

13       Q     You can see deleted text messages?

14       A     Sometimes it gives deleted text messages.

15       Q     I want you to look at the time stamp associated with  
16          number one.

17          January 28th, 2014. That is the day of the  
18          search warrant, right?

19       A     Right.

20       Q     That appears to be the final date of any texting  
21          activity in the report; is that right?

22       A     Yes.

23       Q     Does it appear that this phone was in use on  
24          January 28th, 2014?

25          MR. LaPINTA: Objection.

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1 THE COURT: Objection?

2 MR. LaPINTA: Yes, as to the word "use."

3 Q What, if anything, does the fact that there is a text  
4 message on January 28th, 2014 tell you about the use of  
5 this phone on that date?

6 A It shows the cell phone was alive and actively being  
7 used for communication.

8 Q And does it appear to be an incoming text message  
9 from someone named Andre, A-N-D-R-E?

10 A It does.

11 Q It says, if we don't go to the game tomorrow, which  
12 is perfectly fine, let's watch it together in the movie  
13 room and order food.

14 Did I read it correctly?

15 A You did.

16 Q Now I will kind of walk through the rest of the ten  
17 pages.

18 Page 2, the entry that starts with number 54.

19 Is it fair to say that this is a sent message to  
20 a person identified in the contact as Vinny?

21 A Yes.

22 Q And the text of the sent message from the cell phone  
23 says, here's my email address if you need it:

24 Joeval5@optonline.net?

25 A Correct, yes.



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1 Q Page 3, if you go there, please.

2 Are you there?

3 A Yes.

4 Q There is an entry 550.

5 A I see it.

6 Q It looks to be an international number with a country  
7 calling code of plus 38.

8 A Yes.

9 Q It is a sent message from that cell phone you have in  
10 front of you, right?

11 A Yes.

12 Q That was seized from the defendant's house on  
13 January 28th, 2014?

14 A Yes.

15 Q The sent message says: Write me;  
16 joeval5@optonline.net?

17 A Correct.

18 Q Just jump down to the next message, please.

19 A Yes.

20 Q Entry 551, which is on the same page, the very next  
21 one?

22 A It is.

23 Q It appears to be a message a few minutes before the  
24 message that you just read out loud; is that right?

25 A Yes.

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1 Q So it is a timeline in a reverse chronological order?

2 A Yes.

3 Q And the message that was sent, can you just read --

4 I'll read it. I will read the message aloud and you tell  
5 me if I get it wrong.

6 You are, my sweet. I'm going out now, but I saw  
7 your Skype message when I first -- when I finished Skype.  
8 I don't have Skype messaging sweetie. I will give you my  
9 email address, Yara. Helena is with some man. She showed  
10 me pics of her daughter [REDACTED] in Turkey or UKR. I don't  
11 know? We just write each other so far. We will find the  
12 right time for you, the letter U, to come to NY. Listen,  
13 you have to go to an au pair meeting -- agency, then I  
14 will bring you here to my home. I have a personal  
15 assistant, slash, au pair, coming to my home in July. She  
16 is from Spain.

17 Write me on my email is: Joeval5@optonline.net.

18 A That is all correct.

19 Q Page 3, we are down the page, 556.

20 A I see it.

21 Q Sent message. Hello Helena. I'm out at Gurney's in  
22 Montauk this weekend. And it goes on to say, provide --  
23 here is my email address in case you forgot.

24 A Correct.

25 Q Now, on page 4, on 278, and at the bottom it says

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1 264, so this is 264 of that multi-page report.

2 A I am on the page.

3 Q Entry number 608, this is a sent message from that  
4 cell phone to a person identified as a contact, Mike.

5 I will read it, and you let me know if I get it  
6 wrong.

7 Hey Mike. Okay. Let's put in the starter and  
8 battery. I'm sure with a fresh battery secondhand starter  
9 it will fire up. Sounded like it wasn't an alternator  
10 issue. Let's do it this way we agreed. My email is  
11 joeval5@optonline.net.

12 A All correct.

13 Q Now we are on page 5.

14 This is the entry 284.

15 A I have it.

16 Q Again, the contact here is Vinny; is that correct?

17 A Correct.

18 Q Outgoing message.

19 It says.

20 Here's my email address if you need it.

21 Joeval5@optonline.net.

22 A Correct.

23 Q Page 6 now, the entry which starts 18,954.

24 A I have it here.

25 Q This appears to be an outgoing message from

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1     October 7, 2013, to a person identified as Kevin  
2     Hendrickson?

3     A     It is.

4     Q     Reading it aloud.

5             Hey man. What old man dude? That's the idea,  
6     never to keep us down while we are still. My email  
7     address is joeval5@optonline.net.

8     A     Yes.

9     Q     I will not go through the rest.

10            Is it fair to say that after a review of the  
11    report, there are a number of similar sent messages where  
12    in sum and substance and in part it says my email address  
13    is joeval5@optonline.net?

14            MR. LaPINTA: Objection.

15            THE COURT: Sustained as to form.

16    Q     All right.

17            Let's go through them.

18            Page 8, number 484. Sent message to somebody  
19    identified as Mike in the 631 area code.

20            Where is 631 located? What is that area code  
21    for?

22    A     It is generally Suffolk County.

23    Q     Suffolk, right?

24    A     Yes.

25    Q     Not Ukraine, is it?

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1 A No.

2 Q July 18th, 2013, sent from the cell phone. Contact  
3 Mike.

4 The message says Mikey, dot dot dot, I gave the  
5 G-I-L-R Sue my email address letter by letter yesterday.  
6 I still don't have the invoice Bro. My email address is  
7 joeval5@optonline.net.

8 A That is correct.

9 Q I'm on page 9 now.

10 Entry 497, and it appears to be a foreign  
11 number.

12 A I have it.

13 MR. LaPINTA: Objection to what it appears to  
14 be.

15 Q Contact is Sana, S-A-N-A?

16 A Yes.

17 Q Sent July 12, 2013.

18 This is my email address sweetheart, okay.  
19 Joeval5@optonline.net.

20 A Yes, that is what it says.

21 Q Entry 512 on page 9 of Exhibit 270.

22 Again to Mike, 631 area code, sent July 3, 2013.

23 Hey Mike, how are you, letter U, man. Boat  
24 looks dynamite. I'll take it out next week. Can you  
25 email me the invoice. My email add is

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1     joeval5@optonline.net.

2     A     That's correct.

3     Q     Next page, page 10. And this is the final one.

4     Entry 526 to a person named Beth in the 631 area code,  
5     7/1/2013, sent.

6             Message says, okay Beth -- let me start over.

7             Okay, thanks Beth. You are the best. My email  
8     joeval5@optonline.net.

9     A     That's correct.

10    Q     Showing you what is marked as  
11    Government's Exhibit 555, which is a redacted portion of  
12    the report. It is two pages.

13             (Handed to the witness.)

14    Q     Is that fair to say?

15    A     Yes.

16             (Whereupon, at this time there was a pause in  
17    the proceedings.)

18             (Counsel confer.)

19             MR. KABRAWALA: Move to admit.

20             (Counsel confer.)

21             THE COURT: Any objection?

22             MR. LaPINTA: No.

23             THE COURT: 555 is admitted.

24             (Whereupon, Government's Exhibit 555 was  
25    received in evidence.)

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1 Q Detective, what are we looking at here?

2 A Excuse me.

3 This is a portion of the extraction report, and  
4 specifically in regards to the phone number 380992256638.

5 Q All right.

6 I want to go through some of these entries, line  
7 by line.

8 The first message is from that number you  
9 described; is that correct?

10 A Yes.

11 Q What is the date of it?

12 A It is December 3rd, 2013, at 3:08 p.m.

13 Q What is -- does the body say?

14 A The body is: Joseph, so what do you think about  
15 property in Dubai as an investment opportunity, question  
16 mark.

17 Q What is the next message? Go ahead and describe the  
18 next message. Same number?

19 A Same number.

20 Again, December 3, 2013, at 8:55 p.m., UTC time.  
21 And it is, you know, you are really damn. You could have  
22 negotiated with me before the criminal case against -- I  
23 can't make up the letter, it is a little fussy on the  
24 copy.

25 MR. BODE: it is you up on the screen there.



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1 THE WITNESS: Let me read the entire thing, a  
2 little blurry on the sheet.

3 You know, you are really damn. You could have  
4 negotiated with me before the criminal case against you  
5 was being opened.

6 Q All right.

7 Let's zoom out, and what is the next message?  
8 What does it indicate to you that it is blank in the from  
9 section?

10 A The blank would mean it is being sent to the phone  
11 number.

12 Q Being sent from that phone?

13 A Being sent from this phone to the phone number  
14 38092995638.

15 Q Okay.

16 So this is sent some two days approximately  
17 after the first few messages we viewed; is that right?

18 A Yes, on December 5th.

19 Q Can you read the portion in all caps.

20 A It is all caps. It says: Listen you crazy woman. I  
21 don't know who you are. If you continue to harass me and  
22 my family again I will go straight to the police. They  
23 have your cell phone number and photo. Do not message me  
24 here on Viber or anywhere else again. Don't ever again.

25 Q What is Viber?

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1 A Viber is a cell phone app service that is very good  
2 in facilitating international phone calls and text  
3 messages.

4 Q All right.

5 Let me put it back up now.

6 I will say -- summarize, from the same 38  
7 number, line 4, it is a day after, approximately, the  
8 message that you just previously read.

9 I want you to read the incoming message, what it  
10 was.

11 A You are really damn. Yes, go to the police. They  
12 are waiting for you.

13 Q Let me jump to the next incoming message, actually  
14 line 6.

15 December 6th, 2013.

16 What is the incoming text?

17 A It says NYPD already has all my info, data and more  
18 and then enough pics and videos.

19 Q The next message appears to be the same number, three  
20 minutes later on the same day, exactly three minutes.

21 What is the text?

22 A It says: Have a nice sleep.

23 Q And the next message after that, 8, 12/6/13, what  
24 does it say there?

25 A Capital letters. Now I will be going to the police

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1 to put your ass in jail for harassment and stalking my  
2 life. You are a sick dangerous woman. I warned you.

3 Q That is an outgoing message?

4 A An outgoing message.

5 Q What is the next message after that?

6 A The next message, December 6th, on 156. Shall I give  
7 you the exact names of the officers you must contact?

8 Q All right.

9 Let's jump down.

10 Read the next one.

11 A A few minutes later, please don't -- please do Joseph  
12 go.

13 Q All right.

14 Why don't you read line 18?

15 A Line 18 is December 7, 2013. At 6:45 p.m., UTC time.

16 It says okay, Joseph, I am fed up with you. I  
17 am sending all the videos I made for you with [REDACTED] to  
18 the FBI. That's the only piece needed to get a court to  
19 arrest you.

20 THE COURT: You misread one word. Please read  
21 it again.

22 THE WITNESS: Okay Joseph, I am fed up with you,  
23 I'm sending all the videos I made for you with [REDACTED] to  
24 the FBI. That's the only piece needed to get a court  
25 order to arrest you. No more mercy for you.

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1 Q Why don't you read the outgoing message, starting,  
2 number 32. It appears to be the same day as the message  
3 you read.

4 A It is December 7th, and it says: I always offer  
5 peace, especially during this blessed time of the year for  
6 family. But you want war.

7 Q Go ahead and read the next one.

8 A The next one is: I helped you and your family. Now  
9 leave it like that. Don't ever forget.

10 Q Read the next one, please.

11 A We shared a lot in our past.

12 The next line is peace be with you.

13 Q What is the next entry there.

14 A The next one says: That's not what the FBI thinks  
15 about you. They think you are a predator.

16 Q Let me stop you right there.

17 I want to have you read just one more, page 2 of  
18 Government's Exhibit 555, line 44.

19 A It is on 1/7/2014. And it says Merry Christmas  
20 Helena.

21 Q What does the next one say?

22 A The next one says, thank you Joseph -- it says thank  
23 you Joseph.

24 Q So the messages were between approximately -- the  
25 messages that you just testified about, is it fair to say

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1 that they started around December 3rd, 2013?

2 A Yes.

3 Q Line number two where there was an incoming text that  
4 says, you could have negotiated with me for the criminal  
5 case against you, etcetera?

6 A Yes.

7 Q When was the date of the search warrant?

8 A It was January 28th, 2014.

9 Q Is it fair to say that some number -- withdrawn.

10 Is it fair to say that the defendant's phone  
11 received information about criminal investigation  
12 concerning him some eight weeks prior to the search  
13 warrant?

14 A Approximately, yes.

15 Q Are you able to say with certainty that all of the  
16 devices that were seized at the defendant's house on  
17 January 28th, 2014 are all the devices that he owned?

18 MR. LaPINTA: Objection.

19 THE COURT: Sustained as to form.

20 Q Are you able to say with any certainty that the  
21 defendant had any other devices, other than the ones that  
22 you had seen there?

23 MR. LaPINTA: Objection.

24 THE COURT: Sustained as to form.

25 Q Do you know what devices, if any, the defendant had

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1 at his house on December 3rd, 2013?

2 A No.

3 Q Could you know that?

4 A No.

5 Q I will show you Government's Exhibit 303-A. Just  
6 look at your screen.

7 Government's Exhibit 303-A is an email in  
8 evidence I'm publishing.

9 (At this time a document was exhibited on  
10 courtroom screen.)

11 Q It is the original message that has come up a number  
12 of times. And I will represent to you it came up a number  
13 of times.

14 I want you to read where I'm circling, the  
15 paragraph starting with, the videos you sent.

16 And end when you get to cell phone camera.

17 A Okay.

18 The videos you sent by cell phone camera are  
19 perfect. And there is no need for the expense of another  
20 camera. When you have done a terrific job with the cell  
21 phone camera.

22 Q I meant the next reference to cell phone camera.  
23 Continue reading until you get to the next reference of  
24 cell phone camera.

25 A Do you want me to restart the sentence?

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1 Q You can go ahead and continue.

2 A I have a new cell phone which allows me to transfer  
3 your video to my email and the screen is bigger to view.

4 Continue?

5 Q Yes.

6 A All right.

7 Plus you can have endless video time per session  
8 with the cell phone camera.

9 Q You can stop there.

10 You testified you didn't find any child  
11 pornography on Government's Exhibit 402, the cell phone?

12 A No.

13 Q But you testified that the defendant received  
14 information as early as the first week of December that  
15 there was a criminal investigation against him?

16 A Yes.

17 Q Could there be other devices out there that weren't  
18 seized --

19 MR. LaPINTA: Objection.

20 THE COURT: Sustained.

21 Q There was no child pornography on the cell phone.

22 Was there any child pornography that you found  
23 on any of the computer devices?

24 A There were.

25 Q Showing you what is admitted in evidence as



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1 Government's Exhibit 400.

2 (Handed to the witness.)

3 Q Do you recognize that.

4 (Counsel confer.)

5 Q Do you recognize that?

6 A Yes.

7 Q Did you evaluate that?

8 A Yes.

9 Q Forensically?

10 A Yes.

11 Q How do you know it is the same device?

12 A I documented it. It has my initials on the top of  
13 it. I put the markings on. I put the unique Suffolk  
14 County case number there.

15 Q I'm showing you what is marked as  
16 Government's Exhibit 401.

17 (Handed to the witness.)

18 Q What is this thing?

19 A This is a computer hard drive that was installed  
20 inside the computer evaluated.

21 Q All right.

22 You have to walk us through this.

23 What is the difference between this computer  
24 tower and that Government's Exhibit 401?

25 A They work in conjunction with each other. This is

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1 the device, if you will, where the data is stored. And it  
2 works with the computer that was basically the mechanical  
3 end of the disk that contains instructions on how to look  
4 at this stuff essentially.

5 Q Was this at some point inside that?

6 A That was installed inside that, yes.

7 Q So Government's Exhibit 401 was inside  
8 Government's Exhibit 400?

9 A Yes.

10 Q You took it out?

11 A Yes.

12 Q I brought it over in a box. Was it in a box?

13 A No, stored in a bag.

14 Q You put it in a box to protect it, right?

15 A Yes.

16 MR. KABRAWALA: The government moves to admit  
17 Exhibit 401.

18 MR. LaPINTA: No objection.

19 THE COURT: 401 is admitted.

20 (Whereupon, Government's Exhibit 401 was  
21 received in evidence.)

22 Q I will bring you over to the overhead for a minute  
23 and I will publish this.

24 (Whereupon, the exhibit/exhibits were published  
25 to the jury.)

Forrestal-Direct/Kabrawala

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1 Q Does it say where it is made?

2 A Made in Malaysia.

3 Q I will bring this back to you.

4 When you got Government's Exhibit 400, I think  
5 you testified you took 401 out of there, right?

6 A Yes.

7 Q What did you do with Government's Exhibit 401, the  
8 hard drive, once you obtained it?

9 A Basically processed it as I previously testified.

10 Q I can't hear you. It is a big courtroom. Sorry.

11 A I applied the process that we discussed before. I  
12 brought it to my forensic work station. I attached it to  
13 a TABLU write block.

14 Q When you -- you talked about a write block before,  
15 and now you are talking about a TABLU write block.

16 Remind us what a write block does again.

17 A The write block prevents basically the back wash of  
18 data even accidentally. It keeps the original pristine.

19 Q You made a forensic copy, which is a bit by bit copy  
20 of the information on that hard drive; is that right?

21 A Correct.

22 Q And the TABLU hard drive -- I will hold up the hard  
23 drive, Government's Exhibit 401, what did you do with it  
24 physically?

25 A Physically it gets attached using cables and a power

**Forrestal-Direct/Kabrawala**

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1 supply to the write block. And then the write block is  
2 actually attached to the forensic computer.

3 Q It is like a dam, isn't it?

4 A Yes.

5 Q And nothing can go from this side of the dam to here;  
6 is that right?

7 A Right.

8 Q And this is in the exact same condition on the date  
9 it was seized, January 24th, 2014?

10 A The data, yes.

11 Q No data whatsoever at all had been changed in any  
12 way?

13 A No.

14 Q What did you do once you hooked up the TABLU write  
15 block, what happened then?

16 A I then used forensic images software, in this  
17 particular case FTK, which is a Forensic Tool Kit. They  
18 have an imaging piece of software that I applied and  
19 basically directed it to make the forensic image a lab  
20 hard drive.

21 Q What, if anything, happened to that specific forensic  
22 image that you extracted from the hard drive?

23 A That is attached to my forensic computer, and it lets  
24 me use all the forensic tools I have installed on the  
25 computer to examine the contents.

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1 Q And did you do anything with that forensic bit by bit  
2 image?

3 A I did.

4 I examined it using EnCase, the forensic tools  
5 we spoke about before. Another tool -- Internet Evidence  
6 Finder, IEF.

7 Q Let me stop you right there.

8 The forensic image that you made, did you make  
9 another forensic image at some point?

10 A I did.

11 Q Why?

12 A The original image that I made on the particular web  
13 hard drive, the hard drive actually failed, corrupted.  
14 I'm not sure why. It just didn't work anymore. So I  
15 reimaged the hard drive and in March -- next, I reimaged  
16 all the media originally imaged in March.

17 Q Now, you took the hard drive at some point and  
18 connected the TABLU write block dam and made a forensic  
19 image?

20 A Yes.

21 Q And you put that forensic image on your laboratory  
22 computer?

23 A The hard drive, yes.

24 Q The hard drive on your laboratory computer?

25 A Right.

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1 Q And at some point the laboratory computer hard drive  
2 failed?

3 A Correct.

4 Q So then you reinitiated the entire process? You  
5 walked back to the storage area presumably where you keep  
6 that hard drive?

7 A Correct.

8 Q Let's go through that process again.

9 Then you reimaged it using what software?

10 A FTK, or Forensic Tool Kit.

11 Q And then you obtained that forensic image, correct?

12 A Correct.

13 Q And then what software did you use on that forensic  
14 image ultimately?

15 A Again, I used EnCase version 6.19, called Internet  
16 Evidence Finder. I also used portions of FTK, the  
17 forensic tools, as opposed to the hard drive imaging  
18 tools. I used a whole series of tools to examine the  
19 contents of the computer.

20 Q And did you find an email on that computer?

21 A I did.

22 Q I will actually show you Government's Exhibit 506.

23 Do you see that?

24 (At this time a document was exhibited on  
25 courtroom screen.)

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1 A Yes.

2 Q What is Government's Exhibit 506?

3 A It is a PowerPoint slide that I put together showing  
4 the directory image as I would see it during my forensic  
5 examination.

6 Q You put together Exhibit 506 to assist us today in  
7 the court proceeding to see how you did your forensic  
8 analysis?

9 A Correct.

10 MR. KABRAWALA: The government moves to admit  
11 506.

12 MR. LATO: No objection.

13 THE COURT: 506 is admitted.

14 (Whereupon, Government's Exhibit 506 was  
15 received in evidence.)

16 MR. KABRAWALA: I will publish it.

17 Q Let's walk through what this exhibit shows.

18 And let me start with the left-hand side, the  
19 first row, C1-HD-1.

20 What is that?

21 A We give every piece of evidence media evidence  
22 numbers so we can talk about it and refer to it.

23 So when I imaged the hard drive from this  
24 computer, what I named it for processing purposes is  
25 computer one, hard drive one.



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1                   If there was a second hard drive in there, we  
2                   would have a computer hard drive two. This was the only  
3                   hard drive in there.

4           Q     That Government's Exhibit 400 only had one hard  
5           drive?

6           A     Yes.

7           Q     How big is the hard drive?

8           A     A 20 gigabit hard drive.

9           Q     Relatively small?

10          A     Yes.

11          Q     And you named the hard drive for your forensic  
12          purposes C1-HD-1?

13          A     Yes.

14          Q     And did you determine at some point whether there was  
15          an operating system on the hard drive?

16          A     Yes.

17          Q     And what operating system was in use on that hard  
18          drive?

19          A     It was Windows Millennium.

20          Q     Windows Millennium?

21                   MR. LATO: Objection to the echo.

22          Q     What is an operating system?

23          A     An operating system is software that is designed to  
24          make everything work together. It basically uses a set of  
25          instructions for the different hardware pieces that

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1 interact with each other. It is a special way of data  
2 being handled by a specific operating system. In this  
3 particular case Microsoft Windows was being used. A lot  
4 of people know Apple is the other one, and that has a  
5 different operating system and they handle data just a  
6 little differently.

7 Generally it is a set of instructions that makes  
8 everything work and how it displays and how you see it.

9 Q I see on the left-hand side of  
10 Government's Exhibit 506, and a red circle, Windows, that  
11 is the operating system?

12 A That is the directory that the files involved with  
13 the operating system reside.

14 Q All right.

15 Let's walk through what is shown, if you can  
16 just walk us through what is shown on  
17 Government's Exhibit 506.

18 A Right below the C1 hard drive one, it shows the hard  
19 drive in this particular case. And in Windows it is  
20 always given a volume number or drive number. In this  
21 particular case the C represents the hard drive, the whole  
22 hard drive in entirety.

23 Down below it are file directories. This is a  
24 standard file directory structure that you would see in a  
25 Windows installation.

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1           A file directory is basically, the best way to  
2 think about it is file cabinets inside your house. There  
3 has to be a way to organize, discuss things and find  
4 things.

5           Basically it is a bunch of file cabinets or  
6 directories that has similar information in them. And  
7 actually opening them up, there would be additional file  
8 folders or cabinets, whatever, that would further organize  
9 things by pictures, by videos, by documents, by all kinds  
10 of different files. It is an organization tool.

11       Q     Did you find anything in My Documents?

12       A     In My Documents there were pictures and documents,  
13 quite a bit of information.

14       Q     What, if anything, did you do next after you -- after  
15 you started forensically analyzing the hard drive?

16       A     Umm, you would start entering all these different  
17 directories and you would use the various forensic tools  
18 to examine what contents are immediately visible.

19       Q     Let's go to the right-hand side of  
20 Government's Exhibit 506.

21           What does this show? What does this directory  
22 structure show?

23       A     This file directory structure is related to the  
24 program Microsoft Express. And what that does is in a new  
25 Windows directory it creates a file directory in one of

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1 the storage areas I told you about called identities and  
2 then puts the Microsoft data all in one place.

3 Q Let me just back you up a little bit.

4 There were programs on this computer?

5 A Yes.

6 Q And one of the programs was Microsoft Express?

7 A Yes.

8 Q What is that?

9 A Microsoft Express, they call it an email client, or a  
10 program you would use to look at, compose, send or  
11 organize your email.

12 Q Okay.

13 And that is a program that is on this computer?

14 A Correct.

15 Q Now, walk us through the right-hand side, the  
16 directory that is for Microsoft Express.

17 A Microsoft Express, depending on the options you  
18 choose, it creates these different folders called DBX  
19 folders. It goes in and makes a folder or in box, or out  
20 box, or deleted box. All this is part of the process that  
21 organizes this information and lets it be used.

22 Q All right.

23 And did you in fact find a sent box?

24 A I found a sent box, yes.

25 Q And what did the DBX file in relation to the sent

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1 box?

2 A It would be sent -- sent DBX, I believe.

3 Q They are maintained in a database in that folder?

4 A It is in a database format, yes, DBX file.

5 Q All right.

6 I will show you --

7 THE COURT: Why don't we take a break before you  
8 proceed.

9 We will take the afternoon break.

10 Do not discuss the case.

11 (Whereupon, at this time the jury left the  
12 courtroom.)

13 THE COURT: Everyone be seated.

14 I would like you to give me an estimate at the  
15 end of the week where we stand. They wonder sometimes if  
16 the case is proceeding as quickly as we are anticipating.

17 I hope to be able to tell them at the end of the  
18 day based on my discussion with the lawyers I anticipate  
19 the presentation of the evidence will be completed  
20 sometime on Monday, and we would have the summations on  
21 Wednesday morning because Tuesday is the holiday.

22 Are both sides comfortable with that?

23 MR. LaPINTA: Yes.

24 MR. KABRAWALA: Yes, Judge.

25 THE COURT: All right. Thank you.

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(Whereupon, a recess was taken.)

THE COURT: Please be seated.

Bring in the jury.

How much more do you have on direct?

MR. KABRAWALA: About an hour and a half.

THE COURT: Okay.

You are not going to finish?

MR. BODE: We will be playing the videos. They  
are all loaded onto the machine.

THE COURT: I wanted to ask about the 229-A.  
There was some confusion yesterday with the two labels.  
We should resolve it at some point to make sure what is or  
is not in evidence. Okay?

MR. KABRAWALA: Yes.

(Whereupon, the jury at this time entered the  
courtroom.)

THE COURT: Everyone be seated.

Mr. Kabrawala.

BY MR. KABRAWALA:

Q Detective, when we broke -- just before the break you  
were testifying about Government's Exhibit 506, which is  
an exhibit that you prepared to assist us to show where  
you found emails on that machine; is it fair to say?

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1 A Yes.

2 Q All right.

3 Did you in fact find emails?

4 A I did.

5 Q Where did you find the emails?

6 A The emails were in all the boxes specific to the  
7 case. I found emails in inbox, parenthesis one, the DBX  
8 and sent items, dot DBX.

9 Q Are those the two items circled in red on the screen?

10 A Yes.

11 MR. KABRAWALA: The government moves to --  
12 sorry.

13 Q I'm showing you what is marked as  
14 Government's Exhibit 550, a CD, and 550-A, another CD.

15 Do you recognize those items? If so, describe  
16 what they are.

17 A I do.

18 These are disks that I created after I extracted  
19 the emails from the hard drive.

20 Q How do you know that you created the disks that you  
21 are holding?

22 A I created the disks and put it in the labelling  
23 machine. And then I initialed the disk and dated the disk  
24 on the top.

25 Q You signed them?



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1 A I did.

2 Q What is 550?

3 A 550 is all the emails from the inbox, parenthesis  
4 one, dot DBX.

5 Q Is that the one I'm -- I have circled here?  
6 Extracted from that hard drive?

7 A Yes, that's correct.

8 Q And what is the other disk?

9 A The other disk is all the emails I extracted from the  
10 sent dot DBX.

11 Q Again, the same question.

12 You extracted those items from that computer,  
13 right?

14 A Yes.

15 Q That hard drive?

16 A Yes.

17 MR. KABRAWALA: The government moves to admit  
18 those two exhibits.

19 MR. LaPINTA: Can we approach, please?

20

21 (Whereupon, at this time the following took  
22 place at the sidebar.)

23 MR. LaPINTA: While we were on the break, I  
24 proposed a stipulation regarding this particular exhibit.

25 This hard drive has over 12,000 emails.

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1 MR. KABRAWALA: No. The entire case has 12,000.  
2 That only has about 2,000.

3 MR. LaPINTA: Okay, 2,000. The same.  
4 2,000 emails on this.

5 I looked at them all. But just as the one snuck  
6 by me, my concern is that the jury, for whatever reason,  
7 may want to see it, and some of the other emails, that we  
8 both looked at them to make sure they are cleansed of any  
9 problems.

10 I don't want to have a foundation for every  
11 unrelated email to be developed. But I will not agree for  
12 every unrelated email to be published to the jury in the  
13 unlikely event they want to see it.

14 MR. KABRAWALA: Judge, this case is about the  
15 control over the devices found in the defendant's house,  
16 which are really germane to the defendant -- to the  
17 government's case. And we produced --

18 THE COURT: I know. But 2,000 emails is a lot  
19 of emails, for purposes of cumulativeness, relevantness  
20 and 404.

21 Obviously the ones you are playing for the jury  
22 they can object or not.

23 But the ones you are not playing for the jury,  
24 if the jury is to ask for all the emails on the disk that  
25 they argue should be redacted in some way --

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1 MR. LaPINTA: That is what I said.

2 MR. KABRAWALA: That is fair.

3 MR. BODE: And the reason why we wanted to put  
4 them all in, Judge, is their forensic expert is not on  
5 yet, and it may be that he may find something else  
6 relevant as well.

7 MR. LaPINTA: I have no problem with that, it  
8 comes in, but if they want to see it.

9 MR. BODE: We agree.

10 MR. LATO: It is resolved.

11 THE COURT: All right.

12

13 (Whereupon, at this time the following takes  
14 place in open court.)

15 THE COURT: Based upon the discussion at the  
16 sidebar, Government's Exhibit 550 and 550-A are admitted.

17 (Whereupon, Government's Exhibits 550 and 550-A  
18 were received in evidence.)

19 MR. KABRAWALA: Thank you.

20 Q Did you find an email between joeval5@optonline.net  
21 and kalichenkoes@mail.ru in the inbox? Let's talk about  
22 the inbox.

23 A The inbox 1 dot DBX, yes.

24 Q Thank you for the clarification.

25 I'm now showing you what is marked as

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1 Government's Exhibit 557.

2 Do you recognize that?

3 (Handed to the witness.)

4 A Yes.

5 Q I will step back for a second.

6 Government's Exhibit 562, I will show you that.

7 (Handed to the witness.)

8 Q Do you recognize this email?

9 A I do.

10 Q Did this come from the inbox dot DBX file CD that was  
11 just admitted into evidence?

12 A The inbox 1 dot DBX, yes.

13 MR. KABRAWALA: Move to admit this particular  
14 exhibit, 562.

15 MR. LaPINTA: No objection.

16 THE COURT: 562 is admitted.

17 (Whereupon, Government's Exhibit 562 was  
18 received in evidence.)

19 MR. KABRAWALA: Publishing.

20 (At this time a document was exhibited on  
21 courtroom screen.)

22 Q What is the date of the email?

23 A It is cut off.

24 Q My goodness.

25 A June 23, 2011.

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1 Q June 23, 2011?

2 A Yes.

3 Q From Olena Kalichenko no joeval5@optonline.net, and  
4 subject Helena?

5 A Yes.

6 Q I will read it.

7 Hello Joseph.

8 Thank you for your letter to me. It was a great  
9 pleasure to get it (sic)?

10 THE COURT: No.

11 MR. KABRAWALA: Sorry.

12 It was a pleasure to get it.

13 Do you want to read it?

14 MR. LaPINTA: Can I read it?

15 Q Go ahead, detective.

16 A It says, Hello Joseph.

17 Thank you for your letter. It was a pleasure to  
18 get it -- no. Thank you for your letter to me, it was a  
19 pleasure to get it.

20 So, Joseph, what are your intentions, comma. I  
21 mean, what kind of relations are you looking for? Are you  
22 currently in New York City? As for me, I am in Dallas  
23 now. What do you think about possible meeting? What do  
24 you do for a living?

25 You are more than welcome to ask me any

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1 questions you want.

2 Helena.

3 Q That is June 23, 2011; is that right?

4 A Yes.

5 Q Are you currently in NYC, that person is asking,  
6 right?

7 A Yes.

8 Q Now, I will show you seven months later, 557.

9 Is Government's Exhibit 557 a portion of the  
10 inbox 1 dot DBX that was entered into evidence?

11 A If you can pull it down on the screen.

12 557, yes.

13 MR. KABRAWALA: Yes.

14 A Yes.

15 MR. KABRAWALA: The government moves to admit.

16 MR. LATO: One moment, if it please, your Honor.

17 (Whereupon, at this time there was a pause in  
18 the proceedings.)

19 MR. LATO: No objection.

20 THE COURT: 557 is admitted.

21 MR. KABRAWALA: Thank you.

22 (Whereupon, Government's Exhibit 557 was  
23 received in evidence.)

24 Q First of all, this email was found on that computer?

25 A Yes.

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1 Q From joeval5@optonline.net.

2 Sunday, January 22, 2012.

3 So some seven months after that initial email;  
4 is that right?

5 A Yes, approximately, yes.

6 Q To Elena Kalichenko, spelled E-L-E-N-A?

7 A Yes.

8 Q Can you read where I'm pointing?

9 You see --

10 A You see bitch, in all capital letters, 9:45 p.m.,  
11 still at the internet place. How is that possible?

12 Q Continue reading on to right before it says as your  
13 backup.

14 A Can you pull it to the right just a little bit, and  
15 put your pen where you want me to start.

16 Q Start -- read from where you were reading to my pen.  
17 (indicating).

18 A Okay.

19 On my screen it is actually cutting off the  
20 letter.

21 Thank you.

22 How is that possible? That was another thing I  
23 warned you about bitch. But you are still there checking  
24 your email -- your mail from other prospects, with my  
25 money, you bitch. Then you cry to me that you have no



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1 more money. But you are sitting there at my cost to write  
2 to other dicks.

3 Q Now, I will scroll down the page.

4 Read from here where it says your time is up.  
5 All the way to where it says tonight.

6 So your time is up. You see that?

7 A Yes.

8 Q To tonight.

9 A Yes.

10 Your time is up, unless you want to be in the  
11 street. Get me more fucking video of your daughter on  
12 your tits playing. And put some of those toys on your  
13 stomach, so she plays over by your pussy, using the cell  
14 phone camera. You won't see money bitch for a video  
15 camera. No fucking way. Get me some really racy cell  
16 phone video, you and your daughter, tonight, or I'll drop  
17 you completely in the streets.

18 Q That is fine.

19 Government's Exhibit 558, a portion of the inbox  
20 1 dot DBX file that is entered in evidence, is that  
21 correct?

22 A Yes.

23 MR. KABRAWALA: Move to admit.

24 MR. LATO: No objection.

25 THE COURT: 558 is admitted.

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1 (Whereupon, Government's Exhibit 558 was  
2 received in evidence.)

3 Q I will show this to you, from Joe Valerio -- sorry,  
4 joeval5@optonline.net, sent on January 23, 2012, from  
5 Olena Kalichenko, subject, FW, your mail.

6 Do you see where my pen is pointed?

7 A Yes.

8 Q Start reading from there to where I stop you.

9 A Pull it in, please.

10 The videos are getting more and more creative by  
11 you and [REDACTED], and how you incorporate the toys in the --  
12 in the -- and it has the and sign, NBP videos are very  
13 creative. Here in America breast feeding or just baby  
14 sucking on tits is very popular.

15 So you keep up the good work each day and  
16 experiment more with your tits with [REDACTED] and try to keep  
17 her in-between your legs as she plays with her toys by  
18 your pussy. I'm sure you just -- the feel of the toys she  
19 plays with just touches your pussy, and I'm sure you will  
20 come. Just keep her secure on the floor or couch, playing  
21 in-between your legs, dash naked. She is bound to touch  
22 your pussy if you put the toys between your stomach and  
23 your pussy.

24 Today I will send you some money.

25 Q Stop right there.

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1                   Would you just re-read the last line. You  
2                   misread it.

3                   THE WITNESS: Today I will send out some money.

4                   MR. KABRAWALA: Thank you.

5           Q       559 is the next exhibit.

6                   Do you see that?

7           A       Yes.

8           Q       Government's Exhibit 559, is it a true and correct  
9                   portion of what is entered in evidence in the inbox 1 dot  
10                  DBX file?

11          A       Yes.

12                  MR. KABRAWALA: Move to admit.

13                  MR. LaPINTA: No objection.

14                  THE COURT: 559 is admitted.

15                  (Whereupon, Government's Exhibit 559 was  
16                  received in evidence.)

17          Q       This is from Joseph Valerio, joeval5@optonline.net,  
18                  sent Tuesday, January 24, 2012, 11:59 p.m.

19                  Fair to say?

20          A       Yes.

21          Q       To Olena Kalichenko, cc Joseph Valerio.

22                  Subject, this covers it, and here it begins.

23                  Fair to say?

24          A       Yes.

25          Q       Start reading here, the next day you are able to go

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1 to the internet place, just from there, and start reading  
2 until I tell you to stop.

3 A The next day you are able to go to the internet place  
4 this Friday, are we clear on this? Thursday you relax at  
5 home with [REDACTED], getting her to play more with you,  
6 exploring your body more down below to your sweetness.  
7 Remember, when [REDACTED] comes to you and touches you, it is  
8 really me who is touching you or in fantasy. This little  
9 beautiful creature who wants to probe you and touch a real  
10 human being for the first time. Close your eyes and let  
11 her explore every crevice of your nipples and pussy. Put  
12 some juice on your nipples and make her suck those nice  
13 tits as you lay there in deep emotional relaxation. And  
14 finally, this little beautiful creature has taken over  
15 your body with oral pleasure. Apply something sweet from  
16 the store, sweet juice or candy on your nipples and your  
17 sweet pussy to play with. Get all this on video for  
18 Thursday, relaxation day. Don't hold back. Remember,  
19 it's me. So let yourself go.

20 I have you in my mouth tomorrow to taste your  
21 sweet nectar juice from your sweet pussy, it is me you  
22 see. It is me you hear. This is -- excuse me.

23 It is me who touches you through [REDACTED].

24 I will check on your Skype account dear. Thank  
25 you for sharing that with me. And you are fully aware of

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1 who's in my life and when they come, stay or go. You will  
2 always know -- you will always, Audrey, I respect him, the  
3 father of your child, and I will not interfere with that  
4 contact. -- sorry, I lost my place here.

5 Q And I will not interfere with that.

6 You can stop there.

7 A Okay.

8 Q Do you see where it starts with the capital letters  
9 again?

10 A Yes.

11 Q Start reading from there again.

12 A For videos with [REDACTED], all with her, from many  
13 angles, from your tits to your cute toes and every crevice  
14 to be explored. All videos, make this count, there are  
15 the ones that will. I kiss you all over for every inch  
16 [REDACTED] explores and as she lands on your planet, Helena,  
17 she will explore your valleys, mountains, curves and your  
18 wet juicy bush, with ample fruit of nectar let her touch  
19 those moist crevices.

20 Capital letter, E-M-M, and, D-A. I'm so hard.

21 Here my sweet pussy slave is the MTCN number  
22 836-142-4419.

23 Q Let me stop you there.

24 Was this email found on that computer?

25 A Yes.

Forrestal-Direct/Kabrawala

714

1 Q 560.

2 Do you see that?

3 A I do.

4 Q Is that a true and correct portion of the inbox one  
5 dot DBX?

6 A Yes.

7 MR. KABRAWALA: The government moves to admit  
8 Government's Exhibit 560.

9 MR. LATO: One moment, please.

10 (Whereupon, at this time there was a pause in  
11 the proceedings.)

12 MR. LATO: No objection.

13 THE COURT: 560 is admitted.

14 (Whereupon, Government's Exhibit 560 was  
15 received in evidence.)

16 MR. KABRAWALA: Publishing.

17 (At this time a document was exhibited on  
18 courtroom screen.)

19 Q From Joseph Valerio, joeval5@optonline.net, sent  
20 Wednesday April 4, 2012, 1:27 p.m., to Olena Kalichenko,  
21 cc Joseph Valerio, subject validation, exclamation mark.

22 Some four months after the prior email you just  
23 read; is that correct?

24 A Yes.

25 Q Start with the capital letters.

**Forrestal-Direct/Kabrawala**

715

1 A It says: You need to send me for the -- for the time  
2 being, or email. There is a price for everything. And I  
3 need validation from you. So you send me those pics  
4 for --

5 Q I will stop you and I will read it out loud, and you  
6 tell me -- I think you just skipped a line.

7 A Sorry.

8 Q You need to send me for the time being -- go ahead  
9 and start reading from there.

10 A Pictures of your tits in the shower and you fingering  
11 your pussy from your phone or email. There is a price for  
12 everything. And I need validation from you.

13 Q You can stop there.

14 I will read, and tell me if I get it wrong. I'm  
15 pointing to it.

16 Do the videos with [REDACTED] the way that I want.  
17 This is all the preparation you will need here in NY with  
18 [REDACTED]. So it's best you get used to it. Send me what  
19 you can in pics for now, and that company information,  
20 etcetera, etcetera.

21 So you show me what you got.

22 Take care.

23 Is that fair to say?

24 A Yes.

25 Q Showing you 5 61 -- let me show it to you.



**Forrestal-Direct/Kabrawala**

716

1 (Handed to the witness.)

2 Q Is this 561?

3 A Yes.

4 Q Is that a true and correct copy of the email taken  
5 from inbox 1 dot DBX from that computer?

6 A It is.

7 MR. KABRAWALA: Move to admit.

8 MR. LATO: One moment, please.

9 (Whereupon, at this time there was a pause in  
10 the proceedings.)

11 MR. LATO: No objection.

12 THE COURT: 561 is admitted.

13 (Whereupon, Government's Exhibit 561 was  
14 received in evidence.)

15 MR. KABRAWALA: I will not publish it at this  
16 time.

17 Q I will show you Government's Exhibit 566.

18 Again, is that a true and correct extraction of  
19 an email from the inbox that has been entered into  
20 evidence as Government's Exhibit 550?

21 A Yes.

22 MR. KABRAWALA: Move to admit 566.

23 MR. LaPINTA: No objection.

24 THE COURT: 566 is admitted.

25 (Whereupon, Government's Exhibit 566 was

**Forrestal-Direct/Kabrawala**

717

1 received in evidence.)

2 MR. KABRAWALA: I will publish it. And I will  
3 read it.

4 Joseph, I have just checked the package,  
5 tracking number is -- and there is a package number ending  
6 in 6006. If you go to www.DHL.com.

7 Q Is that fair to say that that is what it says?

8 A Yes.

9 Q By the way, that DHL number I just read, that was in  
10 an email on that computer; is that right?

11 A Yes, it was.

12 (Counsel confer.)

13 MR. KABRAWALA: Can we have a sidebar, Judge?

14

15 (Whereupon, at this time the following took  
16 place at the sidebar.)

17 MR. KABRAWALA: We discussed at a pretrial  
18 conference the admission of this, at which time this was  
19 obviously provided with a certification from DHL.

20 There is nothing that has changed. This should  
21 come in as a self-authenticating document.

22 THE COURT: I remember that conference.

23 MR. BODE: I have the minutes if you need.

24 THE COURT: I remember it.

25 MR. LATO: There is no question that the bulk of

**Forrestal-Direct/Kabrawala**

718

1 the document should come in. My only request is the  
2 following:

3 With respect to the portion that says DVD disk,  
4 we don't know if that was written by Ms. Kalichenko as a  
5 co-conspirator statement made in the course of a  
6 conspiracy, or if it was written by someone at DHL based  
7 upon examination.

8 That is the only question I have. Because if in  
9 fact it was written by somebody from DHL based upon what  
10 Olena Kalichenko said --

11 MR. KABRAWALA: It doesn't matter because it is  
12 taken in the regular course of business.

13 THE COURT: The issue is whether or not it  
14 should come in as a co-conspirator statement, I think  
15 there is a sufficient basis to allow it. You can make  
16 that argument, but I will allow it.

17 MR. LATO: As I was saying it, I think I agree,  
18 anyway. So that is myself saying I agree.

19  
20 (Whereupon, at this time the following takes  
21 place in open court.)

22 MR. KABRAWALA: The government moves to admit  
23 Government's Exhibit 201.

24 THE COURT: Any objection?

25 MR. LATO: No, your Honor.

**Forrestal-Direct/Kabrawala**

719

1 THE COURT: 201 is admitted.

2 (Whereupon, Government's Exhibit 201 was  
3 received in evidence.)

4 MR. KABRAWALA: Publishing it.

5 (At this time a document was exhibited on  
6 courtroom screen.)

7 Q This is a DHL bill of lading, the weigh bill.

8 Do you see the tracking number on top?

9 A Yes.

10 Q Is it the same tracking number as the tracking number  
11 in the last email; is that right?

12 A Yes.

13 Q Contents?

14 A DVD disk.

15 Q Contact name, Kalichenko O.

16 A That's correct.

17 Q Delivery address?

18 A 3 High Gate Drive, Smithtown, New York.

19 Q Contact name, Joseph Valerio?

20 A Correct.

21 Q Date is 26-04-12.

22 What does that tell you?

23 A April 26th, 2012.

24 Q They write things differently across the pond?

25 A They do.

**Forrestal-Direct/Kabrawala**

720

1 Q All right.

2 Did you recover child pornography videos on that  
3 hard drive?

4 A I did.

5 Q I was showing you what is marked as Government's  
6 Exhibit 500, the disk.

7 (Handed to the witness.)

8 Q What is that disk?

9 A This is a disk I created that contained a number of  
10 emails which contained attached videos that are child  
11 pornographic in nature.

12 Q And you extracted that from the inbox of this thing,  
13 this hard drive, Government's Exhibit 401, that was in  
14 this machine, Government's Exhibit 400, that was found at  
15 that man's home (indicating)?

16 A Yes.

17 MR. KABRAWALA: The government moves to admit  
18 the video.

19 MR. LaPINTA: What number is that again?

20 MR. KABRAWALA: Government's Exhibit 500.

21 MR. LaPINTA: No objection.

22 THE COURT: 500 is admitted.

23 Q Now, I will just bring over to you a binder, a binder  
24 with a number of exhibits in it.

25 And I want you with the Court's permission to

**Forrestal-Direct/Kabrawala**

721

1 leaf through it as we go on.

2 Take a look at Government's Exhibit 501, 502,  
3 503 and 504?

4 Are those merely portions of  
5 Government's Exhibit 500?

6 A Yes.

7 Q Essentially they are videos you took from  
8 Government's Exhibit 500 and you put them on a separate  
9 disk?

10 A Correct.

11 Q How do you know that you did that?

12 A We marked, or I marked, and I labeled it video disks.  
13 I created the disk. And after creating each one and  
14 giving it an individual file name, I initialed them.

15 MR. KABRAWALA: Move to admit all of those.

16 MR. LATO: No objection.

17 THE COURT: Government's Exhibit 501 through 504  
18 are admitted.

19 (Whereupon, Government's Exhibits 501 through  
20 504 were received in evidence.)

21 Q By the way, there are emails, too, in the binder,  
22 Government's Exhibit 501-D, 502-A, 503-G and 504-E.

23 How did those relate to those various disks?

24 A The disks contained the files that have the video.  
25 And the text portion of the actual video that the files

**Forrestal-Direct/Kabrawala**

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1       were attached to, this is a printout of that email.

2               MR. KABRAWALA: Move to admit

3       Government's Exhibit 501-D, 50 --

4               MR. LaPINTA: No objection.

5               THE COURT: All right.

6               Those exhibits are admitted, 501-D, 502-A, 503-G  
7       and 504-E.

8               (Whereupon, Government's Exhibits 501-D, 502-A,  
9       503-G and 504-E were received in evidence.)

10              MR. KABRAWALA: I would like to publish 501-D.

11              (At this time a document was exhibited on  
12       courtroom screen.)

13       Q       Is it fair to say that this is an email -- a two-page  
14       email -- that was sent on July 23, 2012 to Joe Valerio at  
15       joeval5@optonline.net from Olena Kalichenko at  
16       kalichenkoes@mail.ru?

17       A       Yes.

18       Q       Is it fair to say?

19       A       Yes.

20       Q       And the preceding message says, from Joe Valerio:

21       Helena, I got all that info you sent me. So far so good.

22       Again, I sent you a text MSG, but no reply for a MTCN.

23       So what's up with that? You indicated that you have more  
24       videos to send via email.

25              Did I read that correctly?

Forrestal-Direct/Kabrawala

723

1 A Yes, you did.

2 Q It looks like in the preceding message, like the  
3 message from Olena, why is there no header message from  
4 the to and from here?

5 A It is a follow-on reply. It is the way the forensic  
6 software processes it.

7 Q Is this a reply to that?

8 A Yes.

9 Q I'm sorry, does this message right here where it says  
10 Joseph, I have composed --

11 A Yes.

12 Q Was that received by this email address as well at  
13 joeval5@optonline.net?

14 A Yes.

15 Q By the way, it says Joseph, I have composed and send  
16 you a letter regard [REDACTED] adoption, spelled  
17 [REDACTED].

18 Her name in my passport is written exactly as I  
19 spelled [REDACTED], [REDACTED]

20 Did I read that correctly?

21 A You did.

22 Q Now, I want to publish for the jury.

23 Actually, while I have this up,  
24 Government's Exhibit 501-D.

25 There are attachments to this July 23, 2012



**Forrestal-Direct/Kabrawala**

724

1 email?

2 A There are.

3 Q There were a number of attachments.

4 There is one right there?

5 A Correct.

6 Q And there is three others?

7 A There are.

8 Q What were on those attachments?

9 A Pardon me?

10 Q What was on those attachments?

11 A These had the attached video files attached to the  
12 emails.

13 Q What did those videos have on them?

14 A They contained child pornographic content.

15 Q Do you see how it is written in blue here and it says  
16 untitled slash C, Windows application, what does that tell  
17 you? What does this stuff tell you?

18 A This is the exact path, or the way of describing  
19 exactly where the child pornographic file was restored.

20 Q On this, Government's Exhibit 401?

21 A Yes.

22 Q Inside this box?

23 A Correct.

24 Q There were a number of videos. You said there were  
25 four attachments which were all videos; is that correct?

**Forrestal-Direct/Kabrawala**

725

1 A On this particular email, yes.

2 Q Government's Exhibit 501 is one of the entire videos;  
3 is that correct?

4 A Yes.

5 Q And Government's Exhibit 501 is total time, two  
6 minutes 33 seconds.

7 We will not play the entire video.

8 Did you make the clips of that video?

9 A I did.

10 MR. LaPINTA: Objection to form.

11 THE COURT: Sustained.

12 Q Did you make the clip of Government's Exhibit 501,  
13 the two minute and 33 second long video?

14 A I did.

15 Q Did you make a shorter clip of it?

16 A I did, yes.

17 MR. KABRAWALA: All clips are in evidence.

18 A We have it as a disk identified as  
19 Government's Exhibit 501, for the record.

20 Q 501-B, which is in evidence, is a 30 second clip of  
21 Government's Exhibit 501?

22 A Correct.

23 Q You created that clip?

24 A Yes.

25 MR. KABRAWALA: I'm going to play it.

**Forrestal-Direct/Kabrawala**

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1 THE COURT: Hold on -- did you say 501?

2 MR. KABRAWALA: B.

3 MR. LaPINTA: D, as in dog.

4 Q D is a piece of paper.

5 The other --

6 THE COURT: Why don't you approach.

7

8 (Whereupon, at this time the following took  
9 place at the sidebar.)

10 THE COURT: When did 501-B, as in boy, come in?

11 MR. KABRAWALA: Judge, it is all contained -- I  
12 see what you are saying.

13 THE COURT: You can offer it.

14 MR. LaPINTA: That is usually what happens.

15 MR. KABRAWALA: That is fine, all right.

16

17 (Whereupon, at this time the following takes  
18 place in open court.)

19 Q Is Government's Exhibit 501-B, is that on the disk  
20 identified and labeled Government Exhibit 501?

21 A 500 or 501? Actually in both places.

22 Q Both places?

23 A Yes.

24 Q When you created the disk, all the 501 series were  
25 contained within the disk labeled 501?

Forrestal-Direct/Kabrawala

727

1 A Correct.

2 MR. KABRAWALA: We move to admit 501-B and  
3 501-C, contained within the disk labeled  
4 Government's Exhibit 501.

5 THE COURT: And 501-C --

6 Q B is a clip found on the email, identified and  
7 admitted as 501-D, as in delta?

8 MR. LaPINTA: Objection. I don't know what clip  
9 is.

10 MR. KABRAWALA: All right. I will do it this  
11 way.

12 Actually, I think 501-C is one of the entire  
13 videos -- it is actually the entire video, 501-C is the  
14 entire video --

15 MR. LaPINTA: Objection.

16 Q Is 501-C the entire video?

17 A I believe so, yes.

18 Q And I will publish that now.

19 (At this time a document was exhibited on  
20 courtroom screen.)

21 Q The last entry on Government's Exhibit 501 --

22 MR. LaPINTA: D or C?

23 THE COURT: Use the letters, say delta or bravo,  
24 or say something, okay?

25 Q 501 delta, there are a number of files on it, right?

**Forrestal-Direct/Kabrawala**

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1 A Four attached files, yes.

2 Q And is one of those files Government's Exhibit 501-C  
3 as an entire video that is two minutes and one second  
4 long?

5 A I believe so, yes.

6 MR. KABRAWALA: The government moves to admit  
7 501-B and C.

8 (Whereupon, a pause takes place in the  
9 proceedings.)

10 MR. LaPINTA: No objection.

11 THE COURT: 501-C and 501-D are admitted and can  
12 be played to the jury.

13 MR. KABRAWALA: We will play 501-B first and  
14 then 501-C.

15 (Video played.)

16 MR. KABRAWALA: Now I will publish  
17 Government's Exhibit 501-C, as in Charley.

18 (Video played.)

19 Q I'm showing you what is marked as  
20 Government's Exhibit 502-A.

21 MR. KABRAWALA: Publishing 502-A.

22 (At this time a document was exhibited on  
23 courtroom screen.)

24 A I see it.

25 Q Was the email also found on the defendant's computer,

Forrestal-Direct/Kabrawala

729

1 this one?

2 A Yes.

3 Q What is the date?

4 A December 29th of 2012.

5 Q And that is when it was sent to the defendant?

6 A Yes.

7 Q Who is it from?

8 A It is from -- sorry, can you move it to the right  
9 just a little bit, please.

10 Q I will just read it. It is Olena Kalichenko?

11 A Yes.

12 Q And were there attachments to this email?

13 A There were.

14 Q A number of attachments?

15 A Yes.

16 There were four.

17 Q All right, four attachments.

18 502 is in evidence.

19 THE COURT: How long is this one?

20 MR. KABRAWALA: One minute, 26 seconds.

21 Q This is one of the videos in that attachment --  
22 withdrawn.

23 One of the videos on that email was

24 September 29th is what we are about to see?

25 A Yes.

1 Q File 3.3, that is a shortening for it.

2 (Video played.)

3 MR. KABRAWALA: Government's 503.

4 THE COURT: Why don't we stop for today.

5 As you know, we are not sitting tomorrow. We  
6 will reconvene on Monday morning at 9:30.

7 I like to give the jury an estimate of where we  
8 are at, given the estimate given at the jury selection  
9 which Judge Brown said two weeks.

10 We discussed with the lawyers, and we feel that  
11 the presentation of the evidence will be complete at some  
12 point on Monday.

13 What will happen is Tuesday is a holiday, so we  
14 will not be sitting on Tuesday, Veterans Day, and on  
15 Wednesday morning you will hear the summations and the  
16 charge.

17 That is my estimate of what will happen next  
18 week.

19 I will see you all Monday morning at 9:30.

20 Thank you.

21 Do not discuss the case or read anything with  
22 regard to the case.

23 (Whereupon, at this time the jury leaves the  
24 courtroom.)

25 THE COURT: If everyone can be seated, please.

731

1 I just want to explain to you that the one 229-A  
2 was some kind of ticket email --

3 MR. BODE: Does the Court have a transcript, I  
4 have it here.

5 229-A, the exhibit was admitted. And the  
6 witness indicates, and they talk about it, and let me  
7 describe an email that appears to be from  
8 joeval5@optonline.net, forwarded to himself  
9 September 15th, 2012, Ticket Master -- September 15, 2012,  
10 Ticket Master email. That is admitted as 229-A, as in  
11 alpha.

12 THE COURT: That is what was admitted. But in  
13 the binder there is a different 229-A, and I want to make  
14 sure that that one is not in evidence, the one in the  
15 binder.

16 MR. BODE: Yes, your Honor.

17 I know defense has the correct one at this  
18 point, your Honor. And as long as we all agree what it  
19 is, we will make sure that the correct one stays in our  
20 binder and that we don't somehow send the other one back.

21 THE COURT: Okay.

22 MR. LaPINTA: Judge, you may have an old exhibit  
23 list that was changed, I think, once or twice, and there  
24 may be a newer one around.

25 THE COURT: All right.



1           The only reason -- 208 to 231 was admitted as a  
2 range, I think.

3           MR. BODE: 208 --

4           THE COURT: 208 and 231 was admitted.

5           MR. BODE: Yes.

6           THE COURT: Are there any other -- within that,  
7 are there subdivisions like A, B, and C, or something like  
8 that?

9           MR. BODE: Let me just double check, your Honor.

10          MR. KABRAWALA: The only subdivision is --

11          THE COURT: 211-A.

12          MR. KABRAWALA: Yes, which is already in  
13 evidence.

14          THE COURT: All right.

15          So we are on the same page then.

16          Any other issues before we break for the day?

17          MR. LATO: Not from the defense, your Honor.

18          MR. KABRAWALA: No, your Honor.

19          THE COURT: I will see you all on Monday.

20          MR. LaPINTA: 9:15, Judge?

21          THE COURT: 9:30.

22          MR. LaPINTA: 9:30. Thank you.

23          (Case on trial adjourned until 9:30 o'clock,  
24 Monday, November nine, 2014.)

25

I-N-D-E-XW-I-T-N-E-S-S-E-S

S T E V E N   T R O Y D	570
CROSS-EXAMINATION	570
BY MR. LATO	
REDIRECT EXAMINATION	590
BY MR. KABRAWALA	
RECROSS-EXAMINATION	606
BY MR. LATO	
FURTHER REDIRECT EXAMINATION	610
BY MR. KABRAWALA	
 B E R N A D E T T E   I M P E R I A L E	611
DIRECT EXAMINATION	612
BY MR. KABRAWALA	
CROSS-EXAMINATION	629
BY MR. LATO	
REDIRECT EXAMINATION	631
BY MR. KABRAWALA	
RECROSS-EXAMINATION	634
BY MR. LATO	
 R O R Y   F O R R E S T A L	639
DIRECT EXAMINATION	639
BY MR. KABRAWALA	

E-X-H-I-B-I-T-S

Defendant's Exhibits B, C and D were received in evidence	588
Government's Exhibit 506 was received in evidence	694
Government Exhibits 337 and 339 were received in evidence	590
Government Exhibit 340 was received in evidence	592
Government Exhibit 565 was received in evidence	600
Government's Exhibit 270 was received in evidence	671
Government's Exhibit 555 was received in evidence	679
Government's Exhibit 401 was received in evidence	689
Government's Exhibits 550 and 550-A were received in evidence	704
Government's Exhibit 562 was received in evidence	705
Government's Exhibit 557 was received in evidence	707
Government's Exhibit 558 was received in evidence	710
Government's Exhibit 559 was received in evidence	711
Government's Exhibit 560 was received in evidence	714
Government's Exhibit 561 was received in evidence	716
Government's Exhibit 566 was received in evidence	716
Government's Exhibit 201 was received in evidence	719
Government's Exhibits 501 through 504 were received in evidence	721
Government's Exhibits 501-D, 502-A, 503-G and 504-E were received in evidence	722

\$	2,200 [3] - 670:16; 671:2	26 [1] - 729:20	17-18; 734:6
\$12,000 [1] - 595:24	20 [3] - 587:14; 608:3; 695:8	26-04-12 [1] - 719:21	342 [1] - 627:1
\$12,350 [2] - 594:18; 595:14	200 [4] - 568:18; 593:16; 653:22, 25	264 [2] - 676:1	343 [1] - 627:1
\$150 [2] - 624:7	200-A [1] - 593:25	26th [1] - 719:23	35 [1] - 568:18
,	2000 [1] - 652:19	270 [9] - 638:10; 670:12, 20; 671:13, 15-16, 19; 678:21; 734:8	38 [2] - 674:7; 682:6
'10 [1] - 661:19	2001 [2] - 641:11; 642:8	278 [1] - 675:25	38092995638 [1] - 681:14
0	2005 [5] - 613:6; 615:21; 642:17; 661:13	28 [5] - 596:4, 10, 14; 598:10; 600:6	380992256638 [1] - 680:4
0094 [1] - 568:3	2007 [1] - 647:10	284 [1] - 676:14	3:08 [1] - 680:12
1	2009 [1] - 661:19	28th [15] - 574:9; 607:19, 24; 608:2; 632:10, 12; 655:19; 665:6; 672:17, 24; 673:4; 674:13; 685:8, 17	3rd [3] - 680:12; 685:1; 686:1
1 [6] - 704:23; 705:12; 707:10; 709:20; 711:9; 716:5	201 [4] - 718:23; 719:1; 734:19	29th [2] - 729:4, 24	4
1-631-265-2379 [2] - 593:5, 9	2010 [3] - 606:24; 615:22	3	4 [3] - 675:25; 682:7; 714:20
1-800 [1] - 591:6	2011 [6] - 606:15; 607:2; 615:22; 705:25; 706:1; 707:3	3 [14] - 591:8; 593:6; 594:7, 21, 25; 614:23; 616:6, 18; 655:21; 674:1; 675:19; 678:22; 680:20; 719:18	40-caliber [2] - 597:18
1/7/2014 [1] - 684:19	2012 [13] - 604:20; 631:17; 654:16; 708:2; 710:4; 711:18; 714:20; 719:23; 722:14; 723:25; 729:4; 731:9	3.3 [1] - 730:1	400 [5] - 688:1; 689:8; 690:4; 695:4; 720:14
10 [1] - 679:3	2013 [11] - 631:17; 677:1; 678:2, 17, 22; 680:12, 20; 682:15; 683:15; 685:1; 686:1	30 [3] - 639:25; 640:1; 725:20	401 [12] - 688:16, 24; 689:7, 17, 19-20; 690:5, 7, 23; 720:13; 724:20; 734:10
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, : 14 CR 0094  
v. : U.S. Courthouse  
Central Islip, N.Y.  
JOSEPH VALERIO, :  
Defendant. : TRANSCRIPT OF TRIAL  
November 10, 2014  
-----X 9:30 a.m.

BEFORE:

HONORABLE JOSEPH F. BIANCO, U.S.D.J.  
and a jury

APPEARANCES:

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Proceedings recorded by mechanical stenography.  
Transcript produced by computer-assisted transcription.

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M O R N I N G     S E S S I O N

(Case called.)

(Appearances noted.)

THE COURT: Good morning.

And Mr. Valerio is present.

Is there anything we need to discuss before the jury comes out?

MR. LAPINTA: No, your Honor.

MR. KABRAWALA: No, Judge.

THE COURT: Let's bring the jury in.

What is your last name, sir? I forgot.

THE WITNESS: Forrestal.

THE COURT: Forrestal.

How much do you have of this witness?

MR. KABRAWALA: Approximately an hour to an hour and 30 minutes.

(Whereupon, the jury at this time enters the courtroom.)

THE COURT: If everyone could be seated.

Good morning, members of the jury. We are ready to continue with the trial.

As you recall, last Thursday when we ended, Mr. Forestall was on direct examination, so we'll continue from that point.

**Forrestal - Direct/Kabrawala**

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1 I remind you, sir, you are still under oath.

2 Do you understand?

3 THE WITNESS: Yes, sir.

4 **R O R Y F O R R E S T A L,**

5 having been previously sworn, resumed the stand  
6 and testified further as follows:

7 DIRECT EXAMINATION

8 BY MR. KABRAWALA: (Continue)

9 Q You testified last Thursday among other things that  
10 you conducted an analysis of a cell phone found in the  
11 defendant's house.

12 A I did.

13 Q You testified that you found a number of text  
14 messages.

15 Do you remember that testimony?

16 A I to.

17 Q You also testified that there was no child  
18 pornography that was found on the cell phone.

19 Do you remember that?

20 A I do.

21 Q Did you find any images at all on the phone?

22 A There were images on the phone.

23 Q Exhibit 270-A as in alpha.

24 Do you see that image, sir?

25 A I do.

**Forrestal - Direct/Kabrawala**

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1 Q It's Government's Exhibit 270-A as in alpha?

2 A Correct.

3 Q Did you recover that image from the defendant's cell  
4 phone?

5 A I did.

6 MR. KABRAWALA: The Government moves to admit  
7 Government's Exhibit 270 alpha.

8 MR. LAPINTA: No objection.

9 THE COURT: 270-A is admitted.

10 (Whereupon, Government Exhibit 270-A was  
11 received in evidence.)

12 MR. KABRAWALA: Permission to publish?

13 THE COURT: Yes.

14 MR. KABRAWALA: Publishing Government 270-A.

15 BY MR. KABRAWALA:

16 Q Is that a picture that you recovered from this cell  
17 phone (indicating)?

18 A Yes.

19 Q I will show you Government's Exhibit 402, the cell  
20 phone.

21 Look at the picture that is depicted in  
22 Government's Exhibit 270-A.

23 A I see it.

24 Q Now I'm showing you Government's Exhibit 202.

25 Did that cell phone appear to be depicted in the

**Forrestal - Direct/Kabrawala**

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1 image you just saw?

2 A It appears to be the same cell phone.

3 Q Does this appear to be what they call a selfie?

4 MR. LAPINTA: Objection.

5 THE COURT: Sustained.

6 The jury will disregard that.

7 Q What kind of image is it?

8 A In the vernacular, they use a selfie.

9 Q Selfie.

10 Showing you Government's Exhibit 270 bravo,  
11 270-B.

12 Do you recognize that image?

13 A Another one of the images I recovered from the cell  
14 phone.

15 Q From Government's 402, the cell phone?

16 A Yes.

17 MR. KABRAWALA: The Government moves to admit  
18 Government's Exhibit 270-B as in bravo.

19 MR. LAPINTA: No objection.

20 THE COURT: 270-B in evidence.

21 (Whereupon, Government Exhibit 270-B was  
22 received in evidence.)

23 MR. KABRAWALA: I will now publish it.

24 Q What is 270-B as in bravo?

25 A It's a selfie.

**Forrestal - Direct/Kabrawala**

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1 Q I'm going to bring you what has been marked as  
2 Government's Exhibit 559-A as in alpha, and copies have  
3 been provided to counsel and copies provided to the Court.

4 It's a two-page exhibit.

5 Do you recognize what that document is?

6 A It is one of the recovered e-mails, recovered from  
7 the hard drive.

8 Q I'm sorry, I can't hear you.

9 A It's one of the recovered e-mails that are recovered  
10 from InBox 1.

11 Q Could it have been from the "sent" folder?

12 A "Sent" folder.

13 Q Government 559-A was recovered from the defendant's  
14 computer "sent" folder?

15 A Yes.

16 MR. KABRAWALA: Government moves to admit 559-A  
17 as in alpha.

18 MR. LATO: One moment, your Honor.

19 MR. LAPINTA: No objection.

20 THE COURT: 559-A is admitted.

21 (Whereupon, Government Exhibit 559-A was  
22 received in evidence.)

23 MR. KABRAWALA: I'm publishing Government's  
24 Exhibit 559-A as in alpha.

25 Q Did this appear to be an e-mail from



Forrestal - Direct/Kabrawala

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1 joeval5@optonline.net to Olena Kalichenko?

2 A It does.

3 Q What is the date of the sent e-mail, please?

4 A January 24, 2012.

5 Q I'm going to highlight a portion of it, and I'd like  
6 for you to read the highlighted portion, please.

7 A Try to resend those videos from yesterday, MOV 00042,  
8 MV quote 46, MV quote 49, MV quote 52, MV quote 53, all of  
9 them, again. Seems there was too much memory at once to  
10 handle for the phone --

11 Q Let me stop you there.

12 If you could, based on your experience in  
13 computer forensics, what's an MOV 0042? What is that  
14 referring to?

15 MR. LAPINTA: Objection.

16 What is it referring to -- I object to it.

17 THE COURT: Sustained to form.

18 Q What is MOV 0042 as it is referred to in this e-mail?

19 MR. LAPINTA: Objection.

20 (Whereupon, at this time the following took  
21 place at the sidebar.)

22 (Continued.)

23

24

25

**Forrestal - Direct/Kabrawala**

742

1 THE COURT: I don't know what that is.

2 Is that something that is a general type of  
3 file?

4 MR. KABRAWALA: It's a movie file.

5 THE COURT: Based upon what?

6 MR. KABRAWALA: The name convention. The naming  
7 convention is a movie file naming convention.

8 I can asked: Based on your experiences as a  
9 forensic -- in computer forensics, what is an MOV. What  
10 does MOV stand for.

11 THE COURT: All right.

12 MR. LAPINTA: All right.

13 (End of sidebar conference.)

14 (Continued.)

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Forrestal - Direct/Kabrawala

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1 BY MR. KABRAWALA:

2 Q Detective Forrestal, based on your experience in  
3 computer forensics, what is MOV?

4 A MOV is -- usually a file extension for the video-type  
5 of files in computers.

6 Q Continue reading, please.

7 You were asked?

8 A Very nice ones with you and [REDACTED] Great job. You  
9 see you are bonding very well with [REDACTED]. As you can see  
10 my energy is flowing through [REDACTED] on to you. Do you  
11 feel it? It's coming from me, as she touches and explores  
12 your breasts then to touch you below.

13 As you keep her between your legs safely, with  
14 your legs up around her, putting her toy down by your  
15 sweet pussy, from your belly down to your pussy. With you  
16 and her securely on the couch, bed or floor, you can use  
17 the cell phone camera with one hand, grabbing your tits  
18 with the other, and from your eye view down to your sweet  
19 pussy. You will be recording [REDACTED] playing with your  
20 sweetness below as she touches and explores you, as you  
21 continue to insert the toys between your legs. This will  
22 be like a French short film. We will work on a title my  
23 sweeties.

24 Q Thank you.

25 I am going to have you scroll down.

Forrestal - Direct/Kabrawala

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1 I just highlighted a portion of Government's  
2 Exhibit 559-A as in alpha.

3 Would you mind reading that highlighted portion,  
4 please?

5 A I think all I may need from you is [REDACTED]  
6 information. I have a copy of your passport, so I think  
7 that is all for now. Let me get to the Western Union  
8 place later because apparently all transactions to the  
9 Ukraine --

10 Q I think you misread that.

11 A By phone or online, they suspect high fraud activity  
12 in the Ukraine. So on my way back from the meeting I'll  
13 have to stop at one of their locations. Nothing is simple  
14 in the Ukraine, I guess, these days. So I will get the  
15 money out to you later sometime.

16 Q Thank you.

17 That was a January 24, 2012 e-mail, correct?

18 A Correct.

19 MR. KABRAWALA: I'm now publishing Government's  
20 Exhibit 322 which is in evidence.

21 Q This is a Western Union summary chart.

22 Is there an entry for January 24, 2012, the same  
23 date as that e-mail?

24 A It is.

25 Q How much does it say -- I'm sorry.

**Forrestal - Direct/Kabrawala**

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1 Does it say the sender name is Joseph Valerio,  
2 sent to a payee named Olena Kalichenko?

3 THE COURT: You say e-mail.

4 Q Withdrawn.

5 Does it say a sender named Joseph Valerio sent  
6 money to a payee named Olena Kalichenko?

7 A It does.

8 Q Where does it say, according to the summary chart,  
9 the payee, Olena Kalichenko, was paid? What country was  
10 she paid in?

11 A Ukraine.

12 Q How much was paid on that date?

13 A \$150.

14 Q On Thursday there was testimony about videos that  
15 were found on the defendant's computer, Government's  
16 Exhibit 400, and the hard drive within that computer.

17 Do you recall that testimony?

18 A I do.

19 Q Approximately how many videos in total were recovered  
20 containing child pornography?

21 A Approximately 30.

22 Q Approximately 30?

23 A Yes.

24 Q We've seen a couple of those videos at this point.

25 I want to draw your attention to the CDs that

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1 have been entered into evidence as Government's Exhibit --  
2 withdrawn.

3 I want to draw your attention to the compact  
4 disk entered into evidence as Government's Exhibit 503.

5 I'm also first going to draw your attention to  
6 Government's Exhibit 503-G as in golf.

7 Do you see that e-mail in front of you?

8 A I do.

9 Q What is the date of that e-mail?

10 A September 30, 2012.

11 Q Where was that recovered from?

12 A Recovered from the hard drive from the computer  
13 seized at the residence of Joseph Valerio.

14 Q Who was the e-mail from?

15 A It's from Olena Kalichenko.

16 Q And who was the e-mail to?

17 A Joseph Valerio.

18 Q It's dated September 30, 2012?

19 A Yes.

20 Q Were there attachments to that e-mail?

21 A There were.

22 Q And I showed you earlier what has been introduced in  
23 evidence as Government's Exhibit 500, which were the  
24 approximately 30 videos that you recovered from the  
25 defendant's computer.

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1 A Yes.

2 Q Does that contain 503-A, 503-B, 503-C, 503-D, 503-E?

3 A Yes.

4 Q Were those exhibits I just mentioned all contained  
5 within Government's Exhibit 500 which is already in  
6 evidence?

7 MR. KABRAWALA: Government moves 503-A through  
8 F.

9 MR. LAPINTA: No objection.

10 THE COURT: 503-G is already in evidence?

11 MR. KABRAWALA: Yes.

12 THE COURT: 503-A through F is admitted.

13 (Whereupon, Government Exhibits 503-A through  
14 503-F were received in evidence.)

15 BY MR. KABRAWALA:

16 Q Now, 503 contains shorter portions of the videos that  
17 are already in evidence in Government's Exhibit 500; is  
18 that fair to say?

19 A Yes, it does.

20 MR. KABRAWALA: I'm going to now publish  
21 Government's Exhibit 503-B as in bravo.

22 For the record, 503-B is a 60-second clip. The  
23 original clip is one minute and 51 seconds.

24 (Video clip played.)

25 Q Now I'll show Government's Exhibit 503-D as in delta.



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1                   For the record, 503-D as in delta is a 60-second  
2 clip of an original video that is three minutes and  
3 11 seconds long. This clip is 60 seconds.

4                   (Video clip played.)

5       Q       Stopping it at 55 seconds.

6                   Government's Exhibit 504 has been admitted --  
7 withdrawn.

8                   Showing you what has already been entered into  
9 evidence as Government's Exhibit 503-E as in echo.

10                  Can you please briefly describe what this e-mail  
11 is?

12       A       This is an e-mail dated October 2, 2012, from Olena  
13 Kalichenko to Joseph Valerio, and has a number of  
14 attachment videos, I believe, if you scroll down.

15                  MR. KABRAWALA: I will scroll down.

16                  THE WITNESS: That's correct.

17       Q       Are there attachments?

18       A       There are.

19       Q       How do you know that you reviewed the attachments in  
20 this particular e-mail that you recovered from the  
21 defendant's computer?

22       A       I used the e-mail to create the CDs, the evidence CD,  
23 and put my initials as I did and printed the e-mail.

24       Q       Appearing to show your initials on the right-hand  
25 side of page 2?

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1 MR. LAPINTA: Objection.

2 THE COURT: Sustained as to form.

3 Q Where did you place your initials?

4 A I placed them on the second page on the right-hand  
5 side, RFF, and the shield is 884.

6 Q You said there were attachments to that particular  
7 e-mail.

8 What kind of attachments were they?

9 A They were video attachments.

10 Q Were all the video attachments that were attached to  
11 that e-mail already introduced as Government's  
12 Exhibit 500, approximately 30 videos recovered from the  
13 defendant's computer containing child pornography?

14 A Yes.

15 MR. KABRAWALA: The Government moves to admit  
16 504-A, 504-B, 504-C and 504-D.

17 MR. LAPINTA: One moment, please.

18 MR. LAPINTA: No objection.

19 THE COURT: 504-A through D is admitted.

20 (Whereupon, Government Exhibits 504-A through  
21 504-D were received in evidence.)

22 MR. KABRAWALA: I will now publish Government's  
23 Exhibit 504-B as in bravo.

24 For the record, it is a 30-second segment of a  
25 larger video that is three minutes and five seconds long.

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1 The original is three minutes and five seconds long; this  
2 clip is 30 seconds.

3 I will now publish 504-B as in bravo.

4 (Video clip played.)

5 MR. KABRAWALA: I'll publish the last one. That  
6 is Government's Exhibit 504-D as in delta.

7 The original clip is -- withdrawn.

8 I will now publish Government's Exhibit 5 owe  
9 four D as in delta. The original video is two minutes  
10 44 seconds long. This portion is 60 seconds.

11 (Video clip played.)

12 MR. KABRAWALA: I've published 30 second on that  
13 clip.

14 BY MR. KABRAWALA:

15 Q Did you also find other e-mails in the inbox of that  
16 computer, Government's Exhibit 400, indicating that the  
17 defendant communicated with someone named Olena  
18 Kalichenko?

19 A Yes.

20 Q I'll pull up on your screen what's been marked as  
21 Government's Exhibit 551.

22 Did you recover this document from the  
23 defendant's computer?

24 A I did.

25 Q Which box was it in, the inbox or some other box?

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1 A InBox 1 (DBX).

2 Q What is DBX?

3 A That's a database file.

4 MR. KABRAWALA: The Government moves to admit  
5 Government's Exhibit 551.

6 MR. LATO: No objection.

7 THE COURT: 551 is admitted.

8 (Whereupon, Government Exhibit 551 was received  
9 in evidence.)

10 MR. KABRAWALA: I'm now publishing Government's  
11 Exhibit 551.

12 Q What does this appear to be?

13 A This is an e-mail sent September 7, 2012, from  
14 Western Union response at westernunion.com to  
15 joeval5@optonline.net, and the subject is: Western Union:  
16 Pickup.

17 It appears to be a notification that money had  
18 been transferred, had been picked up by Olena Kalichenko.

19 Q Just for the record, what was the to address, please?

20 A The "to" was joeval5@optonline.net.

21 Q Is it optonline.net?

22 A Yes.

23 Q Does it say: Dear Joseph Valerio, thank you for  
24 using the Western Union money transfer copyright simple  
25 service. Your money transfer has been picked up by the

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1 receiver. Following is a summary of your transaction.

2 Transaction details.

3 Money transfer control number, and there is a  
4 number --

5 A Correct.

6 Q -- that ends in 53?

7 A Yes.

8 Q The order date is September 6, 2012?

9 A It is.

10 Q The amount sent is \$1,000?

11 A It is.

12 Q Who is the receiver?

13 A Olena Kalichenko.

14 Q What is the status of the order?

15 A Picked up.

16 Q And again, this was recovered from an inbox, database  
17 file inbox, on the defendant's computer, Government's  
18 Exhibit 400?

19 A Yes.

20 Q Showing you Government's Exhibit 552.

21 Do you recognize this document, and if so, where  
22 did you find it?

23 A This is a document that I recovered -- or actually an  
24 e-mail that I recovered from the computer hard drive that  
25 we seized from the residence of Joseph Valerio. It is

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1 from NYS, which is New York State --

2 Q You don't have to read it just yet.

3 MR. KABRAWALA: The Government moves to admit  
4 Government's Exhibit 552.

5 MR. LATO: No objection.

6 THE COURT: 552 is admitted.

7 (Whereupon, Government Exhibit 552 was received  
8 in evidence.)

9 MR. KABRAWALA: I am now publishing Government's  
10 Exhibit 552.

11 Q What does this e-mail appear to be?

12 A It appears to be correspondence from New York State  
13 DMV with joeval5@optonline.net.

14 Q What is the date of the e-mail?

15 A August 3, 2012.

16 Q Does it appear to be a DMV transaction record?

17 A It does.

18 Q What is the name of the cardholder with respect to  
19 the e-mail, Government's Exhibit 552?

20 A Joseph Valerio.

21 Q Was there an attachment to this e-mail?

22 A Yes.

23 Q Are you looking at it in your screen, 552-A as in  
24 alpha?

25 A Yes.

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1 MR. KABRAWALA: The Government moves to admit  
2 Government's Exhibit 552-A.

3 MR. LATO: No objection.

4 THE COURT: 552-A is admitted.

5 (Whereupon, Government Exhibit 552-A was  
6 received in evidence.)

7 MR. KABRAWALA: I'm publishing 552-A.

8 BY MR. KABRAWALA:

9 Q What is the title of this attachment?

10 A This is New York State Department of Motor Vehicles  
11 Temporary Certificate of Registration.

12 Q What is the expiration date of that certificate of  
13 registration?

14 A 8/13/2012.

15 Q When was the temporary certificate of registration  
16 issued?

17 A August 3, 2012.

18 Q Showing you what has been marked as Government's  
19 Exhibit 553.

20 Do you recognize this document, and if so, how?

21 A I do. This is an e-mail that I recovered from the  
22 hard drive of the computer seized from the residence of  
23 Joseph Valerio.

24 MR. KABRAWALA: The government moves to admit  
25 Exhibit 553.



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1 MR. LATO: One moment, please.

2 No objection.

3 THE COURT: 553 is admitted.

4 (Whereupon, Government Exhibit 553 was received  
5 in evidence.)

6 MR. KABRAWALA: I'm publishing this.

7 BY MR. KABRAWALA:

8 Q Is this an e-mail from Olena Kalichenko to Joseph  
9 Valerio dated Sunday, April 29, 2012?

10 A It is.

11 Q I'm going to read the highlighted portion. Tell me  
12 if I get it wrong, please.

13 Joseph, I hope that you and Julia are fine.

14 Joseph, let me explain to you why I ran out of  
15 cash so you won't be surprised.

16 Joseph, for two weeks, I have been living on  
17 \$250 and from that particular money I have spent \$75 to  
18 buy cloth for [REDACTED] and the rest for food and credits for  
19 my cell.

20 You really think it is a lot to feed three  
21 people? \$100 I paid back to my mentor cause I borrowed  
22 from her for taxi, you remember. Then I bought a camera  
23 for \$350 and went to pay for an apartment when I was  
24 making videos for you and 100 for DHL, you know that.

25 Joseph, I have done everything you asked --

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1 THE COURT: You misread that.

2 MR. KABRAWALA: I'm sorry.

3 Joseph, I have done everything you asked me for.  
4 I made you the videos and I was trying to send them to you  
5 through internet, but it could work out. Then I send you  
6 them through DHL like you asked...I Also send you  
7 everything by MMS, you asked me for spending enormous  
8 amount of credits.

9 Other than the corrections that were noted, is  
10 that what it says?

11 A Yes.

12 Q What is MMS?

13 A That is multmessage system.

14 Q What is that?

15 A It's a text message with a file attached. Usually  
16 it's a little bit bigger than just a straight text  
17 message, which is only text.

18 Q I'm showing you what has been marked as Government's  
19 Exhibit 554, and I'm going to scroll through and also show  
20 you 554-A, 554-B, 554-C.

21 Were all of these documents recovered from the  
22 defendant's computer?

23 A They were.

24 MR. KABRAWALA: The Government moves to admit  
25 554, 554-B, 554-C.

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1 MR. LATO: One moment, please, your Honor.

2 MR. LATO: No objection.

3 THE COURT: 554, 554-B through C are admitted.

4 (Whereupon, Government Exhibits 554, 554-B and  
5 554-C were received in evidence.)

6 Q Is that an e-mail from Olena Kalichenko dated  
7 October 16, 2012, to Joe Valerio, subject [REDACTED]?

8 A It is.

9 Q Were there attachments to that e-mail?

10 A Yes, there were.

11 Q Were there three attachments?

12 A Three attachments, yes.

13 Q Showing you the attachments, 554-A, 554-C, 554-B.

14 I will bring this up to you since it is two  
15 pages, a document marked 559-A.

16 You have a copy already.

17 Do you recognize that document, and if so, how?

18 A I recognize the document. It is an e-mail I  
19 recovered from the hard drive of the computer I took from  
20 Joseph Valerio's residence.

21 MR. KABRAWALA: I'm sorry, it is in evidence  
22 already.

23 THE WITNESS: Yes.

24 MR. KABRAWALA: Let me move on.

25 Q Do you see what is up on your screen?

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1 A Yes.

2 Q Government's Exhibit 567.

3 A I do.

4 Q Do you recognize that, and if so, how?

5 A It's also a recovered e-mail from the hard drive of  
6 the computer I seized from the residence of Joseph  
7 Valerio.

8 MR. KABRAWALA: The Government moves to admit  
9 567.

10 MR. LATO: May we have a minute, please, your  
11 Honor?

12 THE COURT: Fine.  
13 (Counsel confer.)

14 MR. LATO: No objection to 567.

15 THE COURT: 567 is admitted.

16 (Whereupon, Government Exhibit 567 was received  
17 in evidence.)

18 Q Showing you Government's Exhibit 567-A as in alpha.  
19 Is this an attachment to 567?

20 A It was.

21 MR. KABRAWALA: Government moves to admit 567-A  
22 as in alpha.

23 MR. LATO: No objection.

24 THE COURT: 567-A is admitted.

25 (Whereupon, Government Exhibit 567-A was

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1 received in evidence.)

2 Q I will show you what is marked as 567, and I'll  
3 publish it as well.

4 What does this appear to be?

5 Please describe it.

6 A This is an e-mail from Tom at  
7 islandsfinestlandscaping@gmail.com, sent Wednesday,  
8 April 25, 2012, to joeval5@optonline.net. The subject is  
9 an estimate number E 122 for: Joe, 3 High Gate Drive.

10 Q I'll try to read accurately the first couple of  
11 sentences.

12 Hi, Joe. It was a pleasure meeting with you  
13 yesterday. I have attached an estimate for all the work  
14 that we had discussed. One thing that I would like to  
15 give my opinion about was I know you wanted to increase  
16 the height of the stone wall in the front of the house  
17 when you got towards the center.

18 Showing you what has been marked -- is there an  
19 attachment to this e-mail?

20 A There is.

21 Q Is 567-A the attachment?

22 A Yes.

23 Q What does this attachment appear to be?

24 A It appears to be an estimate for a backyard cleanup.

25 Q Who is it to?

**Forrestal - Direct/Kabrawala**

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1 A Joe, 3 High Gate Drive, Smithtown, New York.

2 Q What is the telephone number?

3 A Telephone number is (631) 265-2379.

4 Q What is the project?

5 A Lawn renovation, cleanup and garden wall.

6 Q What does the estimate total?

7 A \$7,982.50.

8 Q 568 is before you.

9 Do you see that?

10 A I do.

11 Q Do you recognize that, and if so, how?

12 A This is an e-mail that I recovered from the hard  
13 drive which was taken from the computer I seized from the  
14 residence of Joseph Valerio.

15 MR. KABRAWALA: Government moves to admit  
16 Government's Exhibit 568.

17 MR. LAPINTA: No objection.

18 THE COURT: 568 is admitted.

19 (Whereupon, Government Exhibit 568 was received  
20 in evidence.)

21 MR. KABRAWALA: I'm now publishing the exhibit.

22 Q Does this appear to be some sort of promotional  
23 e-mail?

24 A It is.

25 Q Who is it from?

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1 A Tallmensshoes.com.

2 Q When was the tallmensshoes e-mail sent?

3 A Sent September 27, 2012.

4 Q Who was it sent to?

5 A Joeval5@optonline.net.

6 Q Did you also find e-mails in the defendant's "sent"  
7 folder of the database file?

8 A I did.

9 Q And those are in evidence, aren't they?

10 A They are.

11 MR. KABRAWALA: For the record, they are in  
12 evidence as Government's Exhibit 550-A as in alpha.

13 Q I'm showing you what has been marked as Government's  
14 Exhibit 550-A. I'm not sure if it is in, actually.

15 What is this?

16 A This is a disk that I created that contains all the  
17 e-mails that I extracted from the sent .DBX.

18 MR. KABRAWALA: Government moves to admit 550-A  
19 as in alpha.

20 MR. LATO: Your Honor, may we have a sidebar?

21 THE COURT: Yes.

22 (Whereupon, at this time the following took  
23 place at the sidebar.)

24 (Continued.)

25

**Forrestal - Direct/Kabrawala**

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1 THE COURT: By the way, I think I had this in on  
2 Thursday.

3 MR. LATO: The same understanding as before.  
4 There could be 2,000 e-mails.

5 MR. KABRAWALA: Only 300.

6 THE COURT: Same understanding to the extent the  
7 Government does not show them to the jury now, they ask  
8 for the whole file during the deliberations, that it is  
9 reserved under 401 and 403 objections.

10 MR. LATO: Yes, your Honor. Thank you.

11 MR. KABRAWALA: Thank you.

12 (End of sidebar conference.)

13 (Continued.)

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**Forrestal - Direct/Kabrawala**

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1 MR. KABRAWALA: The Government asks that 550-A  
2 be admitted.

3 THE COURT: Subject to the discussion at  
4 sidebar, it is admitted.

5 (Whereupon, Government Exhibit 550-A was  
6 received in evidence.)

7 BY MR. KABRAWALA:

8 Q Showing you what has been marked as Government's  
9 Exhibit 564, do you recognize this e-mail, and if so, how?

10 A This is an e-mail I recovered from the hard drive of  
11 the computer seized from the residence of Joseph Valerio.

12 MR. KABRAWALA: The Government moves to admit  
13 564.

14 MR. LATO: No objection.

15 THE COURT: 564 is admitted.

16 (Whereupon, Government Exhibit 564 was received  
17 in evidence.)

18 MR. KABRAWALA: I'm now publishing Government's  
19 Exhibit 564.

20 Q Can you please briefly describe this e-mail?

21 A This is an e-mail that was sent from Joseph Valerio,  
22 an e-mail to joeval5@optonline.net. It was sent April 6,  
23 2012. It is to Angelique Davidse -- I may have  
24 mispronounced that name. The subject -- to Joseph  
25 Valerio.

**Forrestal - Direct/Kabrawala**

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1 Subject: Happy big third birthday, A[REDACTED].

2 Woaw, yeah.

3 Q Is it fair to say that it appears to be a birthday  
4 greeting?

5 MR. LATO: Objection.

6 THE COURT: Sustained.

7 Q Please read the e-mail.

8 A Happy third birthday, A[REDACTED]. Love and kisses always  
9 from Dadda Valeria, sister [REDACTED], Andre, grandma, Aunt  
10 Bernadette, Uncle Mike, cousins Mario and [REDACTED] and the  
11 rest. We love you. See you soon.

12 MR. KABRAWALA: Thank you.

13 Q In addition to the computer, computer hard drive  
14 specifically, and the cell phone you already testified  
15 about, did you conduct any forensic analysis on any other  
16 computer or computer-related device?

17 A Yes.

18 Q What other device?

19 A I examined the SD card.

20 Q SD?

21 A Yes.

22 Q What does SD stands for?

23 A SD cards are storage data, and they are small cards  
24 used in cameras, cell phones and other devices.

25 Q Showing you what has been admitted in evidence as

**Forrestal - Direct/Kabrawala**

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1 Government's Exhibit 405.

2 Is this an item that you conducted a forensic  
3 analysis on?

4 A It is.

5 Q And that's the memory card, the SD card?

6 A Yes.

7 Q Who is it made by?

8 A This is made by Samsung.

9 Q And you can take it out of the bag if you would like.

10 How do you know that you reviewed that exhibit  
11 in particular?

12 A I put my initials on the face of the SD card, "RFF."

13 Q Turn it around and describe what it says.

14 A This is a request for a set of glasses. At the end  
15 it says --

16 MR. LAPINTA: Objection.

17 MR. KABRAWALA: I'll take it and put it in the  
18 overhead.

19 MR. LAPINTA: I object to any reference what is  
20 said or listed on the document.

21 THE COURT: Do you want to approach?

22 (Whereupon, at this time the following took  
23 place at the sidebar.)

24 (Continued.)

25

**Forrestal - Direct/Kabrawala**

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1 MR. KABRAWALA: (Hanging.)

2 We had this discussion about trade encryptions  
3 during the pretrial conference, and it was very clear that  
4 counsel conceded it is appropriate for the witness to read  
5 aloud what is on that document.

6 MR. LAPINTA: Is it in evidence yet?

7 MR. KABRAWALA: It is in evidence.

8 MR. LAPINTA: You had him -- you asked him who  
9 made the document.

10 MR. BODE: No.

11 THE COURT: Let's not argue about it.  
12 You have no objection to him reading it?

13 MR. LAPINTA: Right.

14 THE COURT: Okay.

15 (End of sidebar conference.)

16 (Continued.)

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Forrestal - Direct/Kabrawala

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1 BY MR. KABRAWALA:

2 Q Is there a country written on that exhibit?

3 A There is.

4 Q What does it say?

5 A It says Korea.

6 MR. KABRAWALA: Thank you.

7 Your Honor, may we take a quick break?

8 THE COURT: How long do you need, a minute or  
9 two? I would rather not take the morning break this  
10 early.

11 MR. KABRAWALA: Just one minute.

12 THE COURT: How much longer do you have of this  
13 witness?

14 MR. KABRAWALA: 30 minutes, 45 minutes.

15 THE COURT: I just want to go to 11:15, so just  
16 take a minute, and we'll just wait.

17 MR. KABRAWALA: Fine.

18 Q Handing you what is marked as Government's  
19 Exhibit 507 through 539.

20 Whatever is not in the binder will be on this?

21 A Yes.

22 Q I'll show it to you on the screen as we proceed  
23 through this.

24 A Okay.

25 Q Showing you what has been marked as Government's

Forrestal - Direct/Kabrawala

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1 Exhibit 505.

2 A Yes.

3 Q Do you recognize what that disk is?

4 A Yes.

5 Q What is it?

6 A A disk that I created that contains a PowerPoint  
7 presentation that I made for presentation here in court.

8 Q Did you make that presentation to assist us and the  
9 jury in understanding your testimony?

10 A Yes.

11 Q Does it contain images that you took from the memory  
12 card that you just testified about, Government's  
13 Exhibit 405?

14 A Yes.

15 Q And are the exhibits, Government's Exhibit 507  
16 through 539, contained within the disk that you just  
17 testified about?

18 A Yes.

19 MR. KABRAWALA: The Government moves to admit  
20 Exhibits 507 through 539, as well as 505.

21 MR. LATO: One moment, please.

22 No objection.

23 THE COURT: 505, 507 through 539, are all  
24 admitted.

25 (Whereupon, Government Exhibits 505 and 507

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1 through 539 were received in evidence.)

2 MR. KABRAWALA: I will now show you everything  
3 just using the screen.

4 THE WITNESS: All right.

5 MR. KABRAWALA: I'm publishing Government's  
6 Exhibit 507 -- withdrawn.

7 I'll actually take it down.

8 BY MR. KABRAWALA:

9 Q What, if anything, did you do once you received the  
10 SD card, memory card?

11 A I ran a forensic analysis on the card.

12 Q Walk us through that, please.

13 A Somewhat similar to the other ways we examine digital  
14 media. In this case we take the SD card and put it in a  
15 tool called -- it is called a write block. This one is a  
16 Digital Intelligence card reader write block. We put it  
17 in there and apply the same process creating an image, and  
18 we add it to our forensic job that we're doing.

19 Q Did you create a forensic image of the memory card?

20 A Yes, I did.

21 Q And it did an exact bit-by-bit copy of that memory  
22 card, Government's Exhibit 402?

23 A It did.

24 Q Did you recover any images on that memory card?

25 A I did.

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1 Q How did you go about recovering imaging from  
2 Government's Exhibit 402?

3 A The forensic software EnCase, E-N-C-A-S-E,  
4 automatically displays some images that are readily  
5 apparent on the SD card.

6 We would then recover the videos. There were  
7 videos on this particular SD card, and we would attempt to  
8 review them to see whether there were images within that  
9 we could recover, directly visible.

10 Q So you used software called EnCase?

11 A Yes.

12 Q Using that software, what, if anything, did you find?

13 A I did. I found a number of images that had been  
14 deleted that contained videos, that when you played the  
15 videos there was a frame of the picture left.

16 Q You found videos but they were deleted, and all you  
17 could see is a still frame of the video?

18 A Correct.

19 Q Was that the same with respect to still images, that  
20 is, photographs?

21 A I recovered a still image from the SD card that was  
22 located on it, yes.

23 Q And I think you testified about your experience using  
24 EnCase earlier last week; is that true?

25 A True.



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1 Q Now, I'm going to show you what has been admitted  
2 into evidence as Government's Exhibit 507.

3 What are we looking at here?

4 Please describe first -- generally, what are we  
5 looking at?

6 A This is a screen shot that I took of what was being  
7 displayed on my monitor as I conducted a forensic analysis  
8 of the four gigabyte SD card.

9 Q I see, generally speaking, two major columns. There  
10 is a column here on the left-hand side of the page with  
11 home, entries, and what appear to be a book.

12 What is that?

13 A The column below it, it's on the home selection.  
14 What that displays is the file directory for the volume  
15 you are looking at, or in this particular case the SD  
16 card.

17 Q What is a file directory?

18 A The organizational structure for this particular  
19 operating system. Just a particular way of organizing  
20 things. They put stuff in places so they know where to  
21 find it.

22 And in this particular case under volume C,  
23 which is the SD card, they created a number of directories  
24 to put information in.

25 Q As part of that information, did you say you

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1 recovered some images?

2 What are we looking at on the right-hand side  
3 column where it says "name"?

4 A This is the actual data that is contained in those  
5 different file directories. It shows you not only the  
6 directory name, but it also shows you the files that were  
7 either in there or that it was able to see immediately  
8 that was deleted.

9 Q All right. So I see that there appears to be -- it  
10 says, SD 2 space 4GB, Samsung?

11 A Yes.

12 Q Below that it C. What is that?

13 A The volume name or drive name it gave this particular  
14 unit, in this case C.

15 Q There appears to be a folder called DCIM.

16 A Yes.

17 Q Within that there is a subfolder called 100 photo?

18 A Correct.

19 Q Below that on line 5 there appears to be something  
20 called cam\_005.jpg?

21 A Correct.

22 Q Describe what that file is.

23 A That file is a picture, a still picture, that was  
24 recovered from the SD card.

25 Q What does JPG stand for?

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1 A J peg, or still picture file, as opposed to a video.

2 Q I see there is a column named "is deleted."

3 Next to that is "last accessed."

4 What date was this cam\_005.jpg image last  
5 accessed?

6 A January 19, 2011.

7 Q 1/19/2011?

8 A Correct.

9 Q What date was that file created?

10 A It was created January 19, 2011.

11 Q What date was that file last written?

12 A January 19, 2011.

13 Q What does "last written" mean?

14 A Last written was the last time that the file was  
15 actually written to the disk, or SD card in this  
16 particular case.

17 Q I see in line 12 there is video.tmp. It says:  
18 Describe, file, deleted, archive?

19 A Yes.

20 Q Then it says "is deleted," and there is a dot next to  
21 it?

22 A Yes.

23 Q Last accessed July 27, 2013?

24 A Correct.

25 Q Do you see that?

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1 A I do.

2 Q What does that mean to you, if anything?

3 A That means that that particular video.tmp was  
4 probably deleted on 7/27/2013, the last time it was  
5 accessed.

6 Q Video.tmp, is that some sort of file?

7 A It is.

8 Q What kind of file is it?

9 A A temporary file created by the Windows file system.

10 Q That was deleted sometime on July 27, 2013?

11 A Correct.

12 Q Is there any way for a file that is on the SD card to  
13 simply delete itself?

14 A No.

15 Q What is required to delete an image or data off an SD  
16 card?

17 A User input of some fashion.

18 Q User input?

19 A Yes.

20 Q What do you mean?

21 A You have to go to a keyboard and put the SD card  
22 actually in some device. You would have to then use a  
23 keyboard and the computer to delete it.

24 Q So it wouldn't spontaneously delete itself?

25 A No.

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1 Q I'll show you what has been admitted as Government's  
2 Exhibit 511.

3 Do you see that?

4 A I do.

5 Q What is the file name of that file?

6 A The file name is cam\_0005.jpg.

7 Q Was that the file you just testified about?

8 A Yes.

9 Q The exact file?

10 A Yes.

11 Q When was that file created?

12 A It was created on January 19, 2011.

13 Q Now, take a look at that photograph.

14 I'm sorry. What time, please?

15 A The time was 6:20 p.m.

16 Q 6:20 p.m.?

17 A Correct.

18 Q Do you recognize Government's Exhibit 332 in that  
19 image?

20 A I do.

21 Q Can you describe where you see Government's  
22 Exhibit 322?

23 Is this a Spiderman ball?

24 A It is.

25 Q Where do you see it?

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1 A Right next to the child in the image.

2 Q Do you see what appear to be Government's  
3 Exhibit 334, 334-A and 334-B in the image itself?

4 A I see one of the pillows, where the head is resting  
5 on it, and it shows partially the symbol on there.

6 Q Now, I'm going to show you what's been marked as  
7 Government's Exhibit 513.

8 Is this information that relates to  
9 cam\_0005.jpg, the image that I just showed?

10 A Yes.

11 Q This is the same structure as was described before?

12 A It is.

13 Q Image dated January 19, 2011.

14 Now, there's a box on the bottom of this  
15 exhibit.

16 What is this information?

17 Can you please describe this information?

18 A It is a screen shot of me depicting the data that is  
19 contained within the file, in this particular case the  
20 metadata.

21 Q What is metadata?

22 A Metadata is data about data, an administrative part  
23 of the file structure that records certain information  
24 about the file. In this particular case it is a picture,  
25 and it went out, recorded administratively in the

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1 background. As you see, it was made on a Samsung  
2 electronics -- gives the model number, in this case  
3 HMX100, and then it imprints a date and time stamp very  
4 often.

5 Q Can you tell what, if any, digital device was used to  
6 create the cam\_0005.jpg file?

7 A Samsung Electronics, HMX100.

8 Q Did you recover any other files other than camera  
9 files -- withdrawn.

10 Did you recover any files other than still image  
11 J peg files from Government's Exhibit 402?

12 A I did.

13 Q What kind of files?

14 A I recovered frames from within video files that were  
15 deleted from the SD card.

16 Q Can you describe what that is, a frame?

17 A A frame. Actually, a video is made up of a series of  
18 frames. It's seamless to you. You see it as a video.  
19 When you play the file, it has these frames.

20 When it is deleted, sometimes frames remain  
21 behind of the file when it is not corrupted.

22 Q When a user deletes something off of a computer,  
23 let's say an SD card, is everything deleted from that SD  
24 card?

25 A No.

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1 MR. LAPINTA: Objection.

2 THE COURT: Overruled.

3 You may answer.

4 A No.

5 Q Why is that?

6 A Actually, the process of deleting something from any  
7 kind of digital media at all, you are not making it really  
8 disappear. It administratively releases that area that  
9 used to occupy whatever digital media piece it is to the  
10 hard drive. It gives you, A, opportunity to recover it,  
11 and then, B, releases that area to be overwritten by  
12 another file or some other media data.

13 Q And this is not overwritten?

14 A No.

15 Q What happened if the data is not overwritten?

16 A Then it can be recovered.

17 Q It can be recovered?

18 A Recovered. Sometimes in full; sometimes just  
19 partially.

20 Q Showing you what has been admitted as Government's  
21 Exhibit 508.

22 What is this?

23 A This is a screen shot that I took of one of the  
24 frames contained within the video HDV\_00 --

25 Q Let me describe it. HDV\_0043.MP4.



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1                   When was it created?

2       A     That file was created on September 10, 2010, at  
3       3:39 p.m.

4       Q     Showing you what has been admitted as Government 509.  
5                   What is this?

6       A     This is a screen shot of one of the frames contained  
7       within the file HDV\_0044.MP4.

8       Q     Just showing you very briefly Government's  
9       Exhibit 509.

10                   Do you see Government's Exhibit 334-B in that  
11       image?

12       A     I see one of the pillows with that symbol on it, yes.

13       Q     Showing Government's Exhibit 510.

14                   Is this a deleted video file named HDV\_0045.MP4?

15       A     Yes.

16       Q     At 3:47 p.m. it was created?

17       A     It is.

18       Q     Again, do you see Government's Exhibit 334-B, or what  
19       appears to be the same color?

20       A     I see cushions that are of the same color, yes.

21       Q     You were at the defendant's house on January 28,  
22       2014?

23       A     Yes.

24       Q     Do you recognize that sofa?

25       A     Yes.

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1 Q Where do you recognize that from?

2 A That was in the basement of Joseph Valerio's  
3 residence.

4 Q Showing Government's Exhibit 515.

5 What is the file name and when was it created?

6 A File name is HDV\_0048.MP4. The file was created on  
7 January 19, 2011, at 6:21 p.m.

8 Q Showing Government's Exhibit 516.

9 Is the file name HDV\_549.MP4?

10 A It is.

11 Q Created January 19, 2011, at 6:25 p.m.?

12 A It is.

13 Q Showing Government's Exhibit 518.

14 File name is HDV\_0053.MP4, created January 19,  
15 2011, at 6:53 p.m.?

16 A Correct.

17 Q Showing 519.

18 What kind of file was it?

19 A This is HDV\_00555, created January 19, 2011, at  
20 6:59 p.m.

21 Q Holding up Government's Exhibit 343, an article of  
22 clothing, and Government's Exhibit 336, a pom-pom.

23 Do you see these two items depicted in the image  
24 that you just described?

25 A I do.

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1 Q Showing you Government's Exhibit 520. It looks like  
2 we've seen this image before.

3 Can you explain the circumstances under which  
4 you found this image again?

5 A One of the things we do while doing the forensic  
6 analysis, we use a function in the forensic software  
7 called image or file recovery, and we direct it to recover  
8 anything it recognizes as an image from the hard drive  
9 that wasn't previously seen.

10 Q So using this other method, you recovered additional  
11 images?

12 A I did.

13 Q And some of them were duplicates?

14 A Correct.

15 Q Why did you use two methods to recover images, one  
16 method being EnCase and the other method what you just  
17 described? Why two things?

18 A That is part of the EnCase forensics suite of tools.  
19 If you want to be complete, one tool will not get it when  
20 the other tool will. And the other we apply.

21 THE COURT: Okay. We'll take the morning break  
22 now.

23 (Whereupon, at this time the jury exits the  
24 courtroom.)

25 (Whereupon, a recess was taken.)

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1 THE COURT: Please be seated.

2 Bring in the jury.

3 (Whereupon, the jury at this time enters the  
4 courtroom.)

5 THE COURT: Continue, please.

6 BY MR. KABRAWALA:

7 Q Before the break you testified about a number of  
8 files that were recovered, HDV files.

9 A Yes.

10 Q What were those files again?

11 A Video files.

12 Q Were those stills part of the video files?

13 A The screen shots, yes.

14 Q How do you know that those stills were part of  
15 deleted videos?

16 A They were actually displayed as deleted in my file  
17 directory tool in the EnCase, and I played the videos,  
18 recovered them, and saw the frames displayed.

19 Q So, for example, if I were to show you Government's  
20 Exhibit 507 -- I believe you testified about this earlier.  
21 In the box where it is deleted, "is deleted," there's a  
22 little dot there.

23 A Yes.

24 Q That's how you know it was deleted?

25 A That and the little displayed symbol in red by the

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1 file name, a circle with a cross through it.

2 Q Showing you another image, Government's Exhibit 524.

3 Can you describe -- first of all, in

4 Government's Exhibit 524, can you describe how you  
5 recovered that image?

6 A That was recovered using the EnCase forensic tools  
7 recovered files, and I directed it to recover anything it  
8 could see on the SD that had the characteristics of a J  
9 peg or image. It recovered it from the unallocated space  
10 of the SD card.

11 Q Can you explain, please, what unallocated space is?

12 A Almost just like it says: that area of the digital  
13 piece of storage media that isn't accounted for. It may  
14 contain data, but it is not specifically saved there or  
15 archived there.

16 Q Showing Exhibit 525.

17 Is this another such image in an unallocated  
18 space?

19 A Yes.

20 MR. LAPINTA: What is that?

21 MR. KABRAWALA: 525.

22 Q This image also was on the SD card that you examined,  
23 correct?

24 A Yes.

25 Q Was this image also recovered in the unallocated

Forrestal - Direct/Kabrawala

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1 space?

2 A It was.

3 THE COURT: What number are you referring to?

4 MR. KABRAWALA: Thank you for the reminder.

5 526.

6 Q Now I'm showing you 527. It appears to be a redacted  
7 portion of 526; is that correct?

8 A Yes.

9 Q Again, do you see the pattern in that image, 526, do  
10 you see the pattern depicted in Government's Exhibit 334?

11 A Yes.

12 Q Showing you 528, Government's Exhibit 528.

13 Was this also recovered from the SD card?

14 A It was.

15 Q Can you briefly describe this image, please?

16 A An image of a child, a child wearing a wig, and the  
17 child is naked, standing, looking out.

18 Q All right. I'm just going to show you 529, which is  
19 a redacted version of 528.

20 Is that fair to say?

21 A Yes.

22 Q Now, do you recognize -- just remember that picture,  
23 okay?

24 A Yes.

25 Q Do you recognize the sofa or the seat, the black seat

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1 that is depicted in Government's Exhibit 528?

2 A Yes.

3 Q I will show it to you one more time.

4 I'm showing you right now Government's  
5 Exhibit 307, and there appears to be in the foreground  
6 some sort of black seat. Is it fair to say?

7 A Yes, it is.

8 Q Showing you again Government's Exhibit 528.

9 Showing you Government's Exhibit 530.

10 Was this image also on the SD card?

11 A It was.

12 Q Showing you 535.

13 Was this image also on the SD card?

14 A It was.

15 Q Were these -- was this unallocated image part of the  
16 video or a still image before it was deleted?

17 A I'm not sure.

18 Q How come you are not sure?

19 A It doesn't attach it to any particular file. No one  
20 knows. It's on the unallocated space because that space  
21 has been released to the operating system and overwritten.  
22 So it wasn't assigned anywhere.

23 Q Is it fair to say it's a fragment of data on the SD  
24 card?

25 A It wouldn't be a fragment of data. It is complete

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1 enough to display as an image, so therefore it would not  
2 be a fragment. It would be able to show the files  
3 attached to it.

4 Q Showing you Government's Exhibit 539.

5 Can you describe this image, please?

6 A This is an image of a child sitting on the couch that  
7 we previously discussed. You can see, I think it is a  
8 Nerf gun, a toy gun off to the side.

9 Looks like she is wearing a piece of a costume.

10 Q Showing you what has been introduced into evidence as  
11 Government's Exhibit 533.

12 Do you see Government's Exhibit 533 in the image  
13 that is being displayed?

14 A Yes.

15 Q Where do you see it in the photograph?

16 A Off to her side on the couch, laying there.

17 Q Showing you Government's Exhibit 514.

18 What is this an image of?

19 A This is a slide I created. I took screen shots while  
20 using a forensic tool to examine the metadata one I  
21 created using the SD card versus one I created using a  
22 camera on a lab SD card.

23 Q Which camera did you use?

24 A I used the Samsung video camera I recovered from the  
25 residence of Joseph Valerio.



**Forrestal - Direct/Kabrawala**

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1 Q Showing you Government's Exhibit 404.

2 Is this the camera you used?

3 A It is.

4 Q Walk us through what you are describing. Tell us  
5 what you did with that camera.

6 A Essentially we took one of the video files that we  
7 recovered that was deleted, and we examined it on a lab  
8 forensic computer using a tool called Exif, a tool. That  
9 is a forensic tool, a little program you can run to  
10 examine in further detail any metadata assigned to a  
11 particular file.

12 I used that tool against one of the video files  
13 I recovered. This one is HDV\_0053.MP4.

14 Q So you have a file that you extracted from the SD  
15 filed and that was called HDV 0043?

16 A 0053.

17 Q I'm sorry. 0053?

18 A Correct.

19 Q And you took a separate SD card?

20 A We took an SD card that we have in our office which  
21 we use for examination purposes. I wiped it completely  
22 clean to make sure there was no data previously -- that  
23 may have been previously on it. I then used that SD card  
24 in this camera and essentially took a video so I can  
25 examine it and compare it to the one of the deleted file.

**Forrestal - Direct/Kabrawala**

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1 Q So when you took one of your SD cards from your  
2 police lab and put it in that camera you are holding --

3 A Correct.

4 Q -- what, if anything, did that reveal?

5 A Using the Exif tool that we discussed before, it  
6 displayed that videos were made with the Samsung camera.  
7 Didn't display a model, but all the characteristics of  
8 that video file were exactly the same.

9 Q Essentially you took a test image; is that fair to  
10 say?

11 A Correct.

12 Q And the data from the test image matched the data on  
13 the file that was recovered from the SD card seized from  
14 the defendant's house?

15 A Correct.

16 Q Now, there's been some testimony about dates of  
17 creation, I believe September 10, 2010, and January 19,  
18 2011, the two dates that you testified about on which  
19 various images or videos were created?

20 A Yes.

21 Q How do you know that those dates are accurate?

22 A I tested the camera, examined the camera, powered it  
23 up, examined the date that was in the camera.

24 Q Walk us through what you did and when you did it.

25 A Took the camera out of our evidence room, took the

**Forrestal - Direct/Kabrawala**

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1 power supplies we seized with the camera, plugged it in  
2 and then powered the camera.

3 Then basically opened the display screen, used  
4 the menu to get to the date and time function, and saw it  
5 was creating the same date. It matched.

6 Q What date did you undertake that activity?

7 A February 26, 2014.

8 Q What was the date on the camera when you turned it  
9 on?

10 A February 26, 2014.

11 Q Did you ever double-check that?

12 A Yes, I did.

13 Q When did you do that?

14 A Last Wednesday.

15 Q When you turned the camera on, did it reflect the  
16 date of last Wednesday?

17 A Yes.

18 Q So you checked the date twice?

19 A I did.

20 Q And it was the same date both times?

21 A It was.

22 MR. KABRAWALA: One moment, Judge.

23 I have nothing further at this time, Judge.

24 Thank you.

25 THE COURT: Cross-examination?

**Forrestal - Cross/LaPinta**

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1                   Go ahead, Mr. LaPinta.

2       CROSS-EXAMINATION

3       BY MR. LAPINTA:

4       Q     Good morning, Detective Forrestal.

5                   How are you?

6       A     Fine, thank you.

7       Q     You are a detective for the Suffolk County Police  
8       Department, correct?

9       A     Yes.

10      Q     You are not a special agent for the Federal Bureau of  
11     Investigation; is that correct?

12      A     I'm a task force officer --

13      Q     You are not a special agent for the FBI?

14      A     Correct.

15      Q     You are not an employee of the United States of  
16     America, correct?

17      A     Correct.

18      Q     As an employer?

19      A     As an employer.

20      Q     You are an employee of our local county, the County  
21     of Suffolk, right?

22      A     Yes.

23      Q     You have worked with the Federal Bureau of  
24     Investigations as a special agent?

25      A     Yes.

**Forrestal - Cross/LaPinta**

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1 Q And you've been cross-designated to work with them,  
2 correct?

3 A Correct.

4 Q Prior to becoming a detective in our local police  
5 department, you were a patrol officer, right?

6 A Correct.

7 Q You were stationed out of a local precinct in  
8 Patchogue?

9 A Yes.

10 Q And your role was a patrol car officer?

11 A Correct.

12 Q You patrolled the streets of the Patchogue area in  
13 Suffolk County?

14 A Mastic-Shirley.

15 Q In that general area?

16 A General area.

17 Q You have prepared a curriculum vitae that describes  
18 your experience in law enforcement?

19 A Yes.

20 Q And you prepared that curriculum vitae?

21 A Yes.

22 Q Another word for curriculum vitae is a résumé?

23 A Yes.

24 Q It is an updated résumé?

25 A Yes.

**Forrestal - Cross/LaPinta**

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1 Q It is a current résumé?

2 A Pretty much so.

3 Q It is an accurate résumé?

4 A Yes.

5 Q It is not a misleading résumé, correct?

6 A Correct.

7 Q Because you would not want to mislead the jury as to  
8 any of your information in law enforcement?

9 A Correct.

10 Q There are numerous parts of your résumé that were  
11 included in your CV?

12 A Yes.

13 Q One important part of that résumé lists a title  
14 "court experience," right?

15 A Correct.

16 Q You wrote in your curriculum vitae about testifying  
17 in various trials, didn't you?

18 A Yes.

19 Q And I believe on your direct examination you went  
20 into, in fact, the name of a case, a number of cases, that  
21 you testified in, right?

22 A Yes.

23 Q You wrote on your curriculum vitae that you testified  
24 in a case by the name of United States v. Wernick?

25 A Yes.

**Forrestal - Cross/LaPinta**

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1 Q You wrote on your curriculum vitae that it was a  
2 three-week trial, right?

3 A Correct.

4 Q You didn't testify for three weeks, did you?

5 A No, I didn't.

6 Q On your résumé, you wrote that you testified in  
7 United States v. Polizzi, correct?

8 A Correct.

9 Q On your résumé, you wrote that it was a three-week  
10 trial that you testified, right?

11 A Yes.

12 Q You didn't testify for three weeks, did you?

13 A No.

14 Q You also mentioned a case by the name of Laurant  
15 Gordon?

16 A Correct.

17 Q G-O-R-D-O-N?

18 A Yes.

19 Q You wrote in your court experience when you wrote  
20 "testimony" that it was a five-day trial?

21 A Correct.

22 Q Once again, you did not testify for five days, right?

23 A No.

24 Q You also wrote down in your court experience on your  
25 résumé: "Other cases: A court marshal in West Point."

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1 A Yes.

2 Q You didn't testify?

3 A I did.

4 Q Did you state that you testified in that case on your  
5 résumé?

6 A I don't recall.

7 Q Do you have a copy of that résumé with you?

8 A I don't have it in front of me.

9 Q If I showed you it --

10 A I'm sure I didn't write it if you say so.

11 Q Is it a fact you did not write on your résumé that  
12 you did not testify?

13 A I did.

14 Q You didn't write on your résumé that you testified.

15 Let me hand you this.

16 MR. LAPINTA: May I approach, your Honor?

17 THE COURT: Yes.

18 Q Look at the last page, please.

19 A (Perusing.) Okay.

20 Q When you list the court-martial proceeding in West  
21 Point, you didn't mention that you testified, right?

22 A No, I didn't.

23 Q Regarding your testimony in Wernick where you listed  
24 the trial lasted three weeks, you only testified for a few  
25 days, correct?



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1 A Correct.

2 Q And also you testified in a state proceeding  
3 Faragano?

4 A Yes.

5 Q You wrote on your résumé you didn't testify there,  
6 right?

7 A I didn't write "testimony" exactly.

8 Q But you did write "five days"?

9 A I did.

10 Q You didn't testify in court for five days, did you?

11 A No.

12 Q You testified on your direct examination that you  
13 were present at the first execution of a search warrant at  
14 Mr. Valerio's Smithtown residence.

15 Do you recall that portion of your direct  
16 testimony?

17 A I do.

18 Q And you would also testify that you had taken part in  
19 hundreds of search warrants, correct?

20 A Correct.

21 Q Is it fair to say that in taking part in hundreds of  
22 search warrants, that you've also taken part in many, if  
23 not hundreds, of opportunities to question suspects when  
24 you executed a search warrant? Correct?

25 A Depending on whether the affiant is on the search

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1 warrant; if it's my case on the search warrant or not.

2 Q If you are saying you are not the affiant on the  
3 search warrant, you wouldn't participate in the  
4 questioning of suspects?

5 A I may or may not.

6 Q You did in this case?

7 A I participated in listening in on the interview.

8 Q But you weren't the affiant?

9 A No.

10 Q You were at the table when the questioning took  
11 place?

12 A Correct.

13 Q Now, that questioning took place in the dining room  
14 of Mr. Valerio's residence, right?

15 A Correct.

16 Q He was seated at the dining room table, right?

17 A He was.

18 Q Across from him was a, would you agree, a five to  
19 six-foot dining room table?

20 A Approximately, yes.

21 Q Even longer? Seven, eight feet?

22 A Approximately.

23 Q In front of where he was sitting?

24 A Yes.

25 Q To the left of him was a special agent sitting next

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1 to him, correct?

2 A I think he was sitting at the other end.

3 Q To the right of him --

4 A Across from him.

5 Q To the right of him was a law enforcement official?

6 A Yes.

7 Q To the left of him was a law enforcement official?

8 A Yes.

9 Q To the back of him was a wall, right?

10 A I don't think it is a full wall. It is open and goes  
11 over to the kitchen.

12 Q There was law enforcement where that opening -- where  
13 it was in the kitchen?

14 A Throughout the residence, yes.

15 Q And also law enforcement in the kitchen that also  
16 borders that room as well?

17 A I didn't make any note who was there at any  
18 particular time, but, yes, they were present.

19 Q So is it fair to say that Mr. Valerio was surrounded  
20 by law enforcement officials, officers, when he was  
21 questioned? Yes or no?

22 A I wouldn't consider that surrounded.

23 Q No?

24 A No.

25 Q To the left of him, back of him, to the right of him,

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1 is not surrounded?

2 A No.

3 Q Well, after you participated or witnessed this  
4 investigation, you took part in the search of that  
5 premises, correct?

6 A I did.

7 Q Would you agree with me that you have great  
8 experience conducting searches for electronic equipment  
9 that you are looking for? Right?

10 A Correct.

11 Q Hundreds of times you've done that, right?

12 A I have.

13 Q So when you began your search of that premises, you  
14 looked in all the rooms, right?

15 A I did.

16 Q And you were careful and complete, right?

17 A Yes.

18 Q And to the best of your ability, you left no stone  
19 unturned in that house, right?

20 A Correct.

21 Q And you found various electronic pieces of equipment,  
22 right?

23 A I did.

24 Q Did you have an occasion to look at a property  
25 receipt that was filled out by Agent Troyd at the time the

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1 search warrant was issued -- was conducted?

2 A I did.

3 Q Would you agree there were 17 items of electronic  
4 equipment that you felt relevant in this investigation to  
5 seize? Correct?

6 A I don't remember the exact number.

7 Q Well, do you have the property receipt with you?

8 A I don't know if I do or I don't.

9 Q If I show you the property receipt, would it refresh  
10 your recollection?

11 A Sure.

12 MR. LAPINTA: May I approach, please?

13 THE COURT: Yes. You don't have to ask to  
14 approach.

15 MR. LAPINTA: Thank you.

16 Q (Handing.)

17 A Okay.

18 Q Does that refresh your recollection that 17 different  
19 items of what you deemed to be relevant electronic  
20 equipment was seized from that home? Correct?

21 A They were listed on 17 lines, correct.

22 Q Well, is that relevant to say there are 17 items,  
23 sir?

24 A On this list, yes.

25 Q And the first item, a white Mac book Apple pro

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1 computer, that was seized?

2 A Correct.

3 Q And there was nothing illegal on that computer,  
4 right?

5 A No.

6 Q There was one Vivitar 370 camera, silver, in the  
7 computer room.

8 Nothing illegal on that device, correct?

9 A Not that I found.

10 Q The Delstar camcorder, silver, you seized that as  
11 well?

12 A Yes.

13 Q Nothing illegal?

14 A No.

15 Q The Nikon COOLPIX camera 30470042 found in the  
16 computer room, nothing illegal on that device; is that  
17 correct?

18 A Yes.

19 Q Item six, the property receipt, T-Mobile LG cell  
20 phone, myTouch, found in the computer room.

21 Nothing illegal was found on that device,  
22 correct?

23 MR. KABRAWALA: Objection, Judge. I think there  
24 has been testimony with respect to that.

25 THE COURT: Overruled.

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1 Q Anything illegal found on that device?

2 A Evidence items that were recovered from that phone.

3 Q Anything of an illegal nature found on that phone?

4 A There were items referring to illegal activity, so  
5 that is evidence, and it refers back to that.

6 Q Various power cords, obviously, is self-explanatory.

7 Lexar 16 gigabyte card.

8 Nothing illegal on that?

9 A Yes.

10 Q PNY 16 gigabyte card.

11 Nothing illegal on that?

12 A Correct.

13 Q Samsung cell phone.

14 Anything illegal on that?

15 A No.

16 Q Acer Aspire D 255 in the master bedroom.

17 Anything illegal on that?

18 A No.

19 Q Dell Dimension SPS tower computer.

20 Nothing illegal on that?

21 A No.

22 Q The Dell tower, the black one in the basement,  
23 correct?

24 A Yes.

25 Q And the flash drive, correct?

**Forrestal - Cross/LaPinta**

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1 A The flash drive turned out to be a mouse. It wasn't  
2 a flash drive.

3 Q Looked like a flash drive?

4 A Yes.

5 Q A mouse and flash drive look alike?

6 A In this case.

7 Q Optiplex silver black computer in the bedroom.

8 Nothing illegal on that?

9 A Correct.

10 Q One silver Dell Latitude DF600 laptop.

11 Nothing illegal on that, correct?

12 A Correct.

13 Q There came a point in time you retrieved all of these  
14 items from the Smithtown residence to your police station  
15 room, right? Laboratory, I'll call it. Right?

16 A I took possession of them at the scene.

17 Q And you took them to your police office, right?

18 A I did.

19 Q And you explained on direct examination that you used  
20 a number of different types of investigative forensic  
21 software.

22 Do you remember that?

23 A Yes.

24 Q And you've explained in detail your experience in  
25 using this software, right?



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1 A Correct.

2 Q It is software that is up to date, right?

3 A Yes, sir.

4 Q It is state of the art software that you used?

5 A Yes.

6 Q And when you used this software in the items I just  
7 asked you, you came up with the conclusion that nothing of  
8 an illegal nature was on the items?

9 A On some of them.

10 Q The ones I asked of you?

11 A Not the ones you asked of me, no.

12 Q Now, would you agree with me one of the most  
13 important software programs you used as an investigator is  
14 this EnCase program? E-N-C-A-S-E, right?

15 A Yes.

16 Q You referred to it a number of times on your direct  
17 examination, didn't you?

18 A Correct.

19 Q And you are not a certified user of that software;  
20 isn't that right?

21 A I'm trained -- not certification. I have a  
22 certificate in the software.

23 Q My question is, you are not a certified user of that  
24 software, correct?

25 A Correct.

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1 Q Yes or no?

2 A I'm authorized to use the software. I don't have the  
3 certification.

4 Q I didn't ask you that.

5 I asked you: Are you certified to use that  
6 software?

7 A You are using the term a little out of -- I'm trying  
8 to answer you properly.

9 Q If you can't answer it, let me know.

10 A Not the way you asked it.

11 Q Did you complete a certification program with the  
12 EnCase manufacturer?

13 A Yes.

14 Q Did you obtain a certification from them when you  
15 took that program?

16 A I attained a certificate of training, not the  
17 certification.

18 Q My question to you: The certification. Are you a  
19 certified EnCase evaluator?

20 A No.

21 Q You didn't take the certification program; isn't that  
22 right?

23 A No, I didn't.

24 Q In fact, the Suffolk County Police Department offered  
25 to pay for the initial class to obtain the certification;

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1 isn't that right?

2 A No.

3 Q Okay. You didn't take it because it cost too much  
4 money?

5 A No, that's not why.

6 Q You didn't take it because you didn't feel it was  
7 important?

8 A Partially, yes.

9 Q Okay. But nevertheless they offered this  
10 certification program that you did not take; is that  
11 right?

12 A Correct.

13 Q You obtained a cell phone from Mr. Valerio's home,  
14 right?

15 A Correct.

16 Q You made a reference to it minutes ago in your direct  
17 examination. That's the phone, right?

18 A Yes.

19 Q Who was the carrier of that phone?

20 A T-Mobile.

21 Q And you are familiar and experienced with obtaining  
22 records from telephone companies, aren't you?

23 A I am.

24 Q And you've obtained cellular records from carriers  
25 many times in the past in your duties as an investigator,

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1 correct?

2 A Correct.

3 Q The number involved here is (970) 310-8942, correct?

4 A Correct.

5 Q You did not obtain any cell records from the carrier  
6 in this investigation, correct?

7 A I didn't personally obtain, no.

8 Q The only records that you received from the cell  
9 phone was what you obtained using your forensic software,  
10 correct?

11 A Correct.

12 Q Information that is kept from the carrier of the cell  
13 phone would provide for specific calls made from and to  
14 that phone, correct?

15 A They could, yes.

16 Q Were you able to obtain all of the calls from and to  
17 that phone from your forensic evaluation of that phone?

18 A I don't believe so.

19 Q Is it fair to say that you were limited in what calls  
20 were placed out of that phone and what calls were placed  
21 into that phone from your forensic evaluation? Correct?

22 A It appears so, yes.

23 Q It appears so or it is so?

24 A It's hard to tell. The data wasn't there, so I  
25 wasn't able to recover it. I don't know what I was

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1 missing.

2 Q But you were able to subpoena that information from  
3 the provider, weren't you?

4 A That wouldn't be my responsibility, to subpoena the  
5 information from the provider. It would depend on what  
6 the data was.

7 Q Well, you have been involved in numerous  
8 investigations involving cell phones, right?

9 A Correct.

10 Q And in some of those investigations, if not most, you  
11 obtained subpoenas to retrieve data from the telephone  
12 carriers, haven't you?

13 A If there is data available, yes.

14 Q Well, did you make an inquiry in this case as to  
15 whether there was data available on that cell phone from  
16 the carrier?

17 A I'm sorry?

18 Q From the carrier?

19 A From the carrier, no, not me. No.

20 Q So you have never looked at data provided to you from  
21 the carrier regarding the cell phone, right?

22 A Not only the carrier --

23 Q Just the carrier data?

24 A Not the only calls available on the unit.

25 Q I didn't ask you if those are the only calls.

**Forrestal - Cross/LaPinta**

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1 I asked you if you received any data from the  
2 actual phone carrier that provided a service to this  
3 phone.

4 A I didn't personally, no.

5 (Continued on the following page).  
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1 Q You viewed records from this carrier before in other  
2 cases, right?

3 A Yes.

4 Q And you read the records that you obtained from this  
5 particular carrier before; is that correct?

6 A Yes.

7 Q And some of that information would include the dates  
8 of phone calls; is that correct?

9 A Correct.

10 Q And it would include the times of the phone calls; is  
11 that correct?

12 A Correct.

13 Q And it would include the number that was either  
14 received or dialed out; is that correct?

15 A Correct.

16 Q And also the duration of the call; is that correct?

17 A Correct.

18 Q And when you obtain a phone number on a data -- on a  
19 record from a provider, you could research who the person  
20 is that holds that phone number; is that correct?

21 A Potentially, yes.

22 Q And none of that investigation was done in this case;  
23 is that correct?

24 A That is not my portion of the investigation.

25 Q As far as you are concerned, did you perform this

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1 investigation with this data from the cell provider?

2 A I provided --

3 Q Yes or no?

4 A I can't answer that yes or no.

5 Q Did you ask for any data from the cell phone provider  
6 with regard to calls to and from that cell phone?

7 A No.

8 Q Did you direct anyone that you were working with to  
9 obtain that data --

10 A No.

11 Q -- from the cell phone carrier?

12 A No.

13 Q And are there other computer experts, cell phone  
14 experts besides you that were involved in this  
15 investigation?

16 A No.

17 Q There were no emailed data on that phone that you  
18 obtained; is that right?

19 A Right.

20 Q And there was text messages in the form of telephone  
21 text messages with the provider; is that correct?

22 A Correct.

23 Q And also text messages from a service called Viber;  
24 is that correct?

25 A Correct.



**Forrestal-Cross/LaPinta**

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1 Q Detective Forrestal, you had occasion to make a  
2 printout of the Viber text messages involved in that  
3 phone; is that right?

4 A Some of them, yes.

5 Q And would you agree that some of those Viber text  
6 messages found on that phone are relevant to this case?

7 A They are.

8 Q And they -- in that extraction report that you  
9 developed on that LG My Touch phone, reveals the source of  
10 where those texts come from, right?

11 A Yes.

12 Q And in the form of phone numbers?

13 A In the form of what appears to be a phone number,  
14 yes.

15 Q And you also have a time stamp; is that correct?

16 A Yes.

17 Q Date stamp, right?

18 A Yes.

19 Q And a body of the message, correct?

20 A Yes.

21 Q You reviewed that extraction report?

22 A Yes.

23 Q And are you familiar with that extraction report?

24 A I am.

25 Q And are you aware that some of those messages were

**Forrestal-Cross/LaPinta**

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1 from a person by the name of Helena; is that correct?

2 A Correct.

3 Q And from your review of that Viber data -- text  
4 information, did you come to the understanding that Helena  
5 was using the word "negotiate" with Mr. Valerio on  
6 numerous text messages; is that correct?

7 A Correct.

8 Q Do you recall seeing the word negotiate from a source  
9 that you know to be Helena's source?

10 A I saw it in the text messages, yes.

11 Q That very word was used a number of times; is that  
12 correct?

13 A Yes, it was.

14 Q Three to be exact; is that correct?

15 A Yes.

16 Q And from reading that as a trained investigator, did  
17 you come to the conclusion that Olena Kalichenko was  
18 trying to extort Mr. Valerio?

19 A It wouldn't be my place to decide if he was being  
20 extorted or not.

21 Q From what you read as a trained officer, a trained  
22 officer, is it your opinion that Helena, by using the word  
23 negotiate, was extorting Mr. Valerio?

24 MR. KABRAWALA: Objection.

25 THE COURT: Sustained.

**Forrestal-Cross/LaPinta**

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1 Q She held over Mr. Valerio's head her ability to  
2 contact authorities; is that correct?

3 A It is not my place to interpret that.

4 Q Okay.

5 Do you recall a message on 12/3/2013, when the  
6 body of the message read, you know, you really -- damn,  
7 you could have negotiated with me before the criminal case  
8 against you was being opened.

9 Do you remember that?

10 A I do remember.

11 Q 12/9/13, do you recall the message from Helena, I see  
12 you really don't want to recognize your mistakes and  
13 negotiate. Let's play hard ball then.

14 Do you remember that message?

15 A I do.

16 Q And there are other messages that have the word  
17 "negotiate" as well; is that correct?

18 A Correct.

19 Q Let's turn your attention to the desktop computer  
20 that you did an investigation of the VTV computer. You  
21 recall that?

22 A Yes.

23 Q And that computer was found in an upstairs office,  
24 right?

25 A Yes.

**Forrestal-Cross/LaPinta**

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1 Q And when you brought that computer to your police  
2 office, you examined the operating program on that  
3 computer, didn't you?

4 A The operating system?

5 Q Yes.

6 A Yes.

7 Q And you used TABLU hardware write block?

8 A Yes.

9 Q And the EnCase program as well?

10 A Yes.

11 Q And you found that the operating system was an older  
12 type system, right? Would you agree with that?

13 A Yes.

14 Q Tell the jury what operating system you found.

15 A Windows Millennium.

16 Q Do you know the year that Windows Millennium was last  
17 produced?

18 A No, not specifically.

19 Q Would you agree with me it was over five years ago?

20 A Agreed.

21 Q Over seven years ago?

22 A Yes.

23 Q Close to ten years ago; is that correct?

24 A I don't know specifically. But an older system.

25 Q Of say in terms of modern technology, it wasn't the

**Forrestal-Cross/LaPinta**

815

1 most modern type of operating system out there; is that  
2 correct?

3 A That would be fair.

4 Q Would you go as far as saying it was an ancient  
5 system being used?

6 A No, not necessarily.

7 Q Well, the last time that that program was produced,  
8 manufactured, technology has advanced considerably, would  
9 you agree?

10 A Yes.

11 Q Video filming, recording, has advanced significantly;  
12 is that correct? Yes or no?

13 A No. I wouldn't agree with that.

14 Q Well, isn't it true that that particular operating  
15 program would have difficulty playing videos that were  
16 part of this case a year ago when this case started?

17 A No.

18 Q It would not?

19 A It wouldn't have a problem.

20 Q It wouldn't have a problem?

21 A No.

22 Q So it is your expert opinion that that system, over  
23 seven years old, or around seven years old, would not have  
24 a problem playing the videos that we have seen here  
25 involving child pornography; is that your testimony?

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1 A Yes, it is.

2 Q Well, you had the occasion to look at these videos;  
3 is that right?

4 A Yes.

5 Q The duration of these videos?

6 A Yes.

7 Q And would you say the longer a video is, the more  
8 problematic it would be to showing on that old program?

9 A Not necessarily.

10 Q And the density of the video -- by the way, what is  
11 density of the video?

12 A I don't know what you are talking about.

13 Q Okay.

14 The way the video is recorded, does that dictate  
15 if it is playable on an operating system?

16 A No, not necessarily, it depends on a large number of  
17 factors, the memory installed, the hard drive, the speed  
18 of the hard drive.

19 Q What was the memory installed on his hard drive?

20 A I don't recall.

21 Q If I told you it was 20 megabit -- megahertz, is that  
22 accurate?

23 A I don't think so the way you stated. It is 2.0  
24 megahertz.

25 Q Do you have anything written down about how big an

**Forrestal-Cross/LaPinta**

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1 operating system it is?

2 A It is not the size of the operating system. The  
3 operating system is the operating system.

4 Q The size of the hard drive?

5 A It is --

6 Q How big is it?

7 A 20 gigabit.

8 Q Is that big in your opinion?

9 A No, small.

10 Q And the size of the hard drive, the more problematic  
11 it would be to play the video?

12 A Not necessarily.

13 Q It could be?

14 A It could be, but not necessarily.

15 Q Now, when you evaluated this computer you found child  
16 pornography on it; is that correct?

17 A I did.

18 Q And that child pornography was found in what you  
19 called to be an inbox; is that right?

20 A Right.

21 Q If child pornography videos were played on that  
22 computer, wouldn't they have been found in other places  
23 besides the inbox?

24 A They should have been, yes.

25 Q Tell the jury where else they should have been found,

**Forrestal-Cross/LaPinta**

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1 if they were played.

2 A They may have -- may have been observed in a media  
3 file. The program that is actually running the video,  
4 there may be elements of it in unallocated places, and the  
5 reference where it was filed, if it was filed, and if it  
6 was archived.

7 Q Anyplace else?

8 A Not off the tip of my tongue.

9 Q Did you find any of those pornography videos in any  
10 media files?

11 A No.

12 Q Did you find any pornography graphic videos in  
13 unallocated space on the computer?

14 A No, I didn't.

15 Q Did you find any pornographic videos, child  
16 pornography, on any temporary files?

17 A No.

18 Q Is it fair to say that in light of the fact that  
19 since there are no other sources of that video besides  
20 that inbox, that there is a great likelihood that those  
21 videos were never played on that computer, correct?

22 A On that computer?

23 Q Yes.

24 A Just on that computer, yes.

25 Q So as you sit here today, in your vast training as a



**Forrestal-Cross/LaPinta**

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1 computer expert you can't tell this jury with any degree  
2 of certainty that those videos of child pornography were  
3 played on that particular computer; is that correct?

4 A On that particular computer?

5 Q Correct.

6 A Right.

7 Q Just because something was in an inbox doesn't mean  
8 it was watched on that computer, correct?

9 A We have reference to it being watched, so it was  
10 watched somewhere.

11 Q Viewed, viewed on that computer.

12 A I have no evidence of it being viewed on that  
13 computer.

14 Q And because of the inbox, it means it was sent to an  
15 email address that was used by that computer; is that  
16 correct?

17 A Used by the recipient of the email.

18 Q On that computer, correct?

19 A Correct.

20 Q Let me turn your attention to the four FD storage  
21 cards evaluation that you did on that. Do you recall that  
22 testimony before?

23 A Yes.

24 Q Three of the storage cards did not contain child  
25 pornography; is that correct?

**Forrestal-Cross/LaPinta**

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1 A Yes.

2 Q The card you did look at, if it contained, if I say  
3 contraband, is that acceptable?

4 A Yes.

5 Q And contraband was found on the Samsung for the SD  
6 device; is that correct?

7 A Yes.

8 Q And you developed a report with regard to your  
9 findings of that particular storage card; is that right?

10 A I did.

11 Q You wrote that report?

12 A I did.

13 Q You wrote it after you were finished with your  
14 investigation of this particular device?

15 A Up to that point, yes.

16 Q And did you look it over?

17 A Yes, I did.

18 Q And is it accurate?

19 A I made a few typos on it.

20 Q Let's talk about the mistakes. There are mistakes on  
21 those reports?

22 A Typos.

23 Q Typos are mistakes or not?

24 A Typing mistakes, yes.

25 Q You identified a file -- well, in the body of your

**Forrestal-Cross/LaPinta**

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1 report you indicate that the cam bottom slash 0005.JPG  
2 file was used by you; is that right?

3 A Yes.

4 Q And I will refer to it as the JPG file; is that okay?

5 A Yes, sure.

6 Q You said you found that JPG file; is that correct?

7 A Yes.

8 Q And that you determined that that file was recorded  
9 on 1/19/11; is that correct?

10 A Correct.

11 Q And the time of that file being recorded in the body  
12 of your report, you have it as 0620 hours; is that right?

13 A Yes.

14 Q Is 0620 hours military time; is that correct?

15 A Generally, yes.

16 Q You are familiar with military time because you are a  
17 veteran, are you?

18 A Yes.

19 Q And tell the jury, what is 0620 hours?

20 A 0620 would be 6:20 a.m. in the morning.

21 Q And in your report that you wrote, you have 0620  
22 hours in the body of the report; is that correct?

23 A I don't recall. I have to see what I put afterward,  
24 if I put p.m. or not.

25 Q Do you have your report in front of you?

**Forrestal-Cross/LaPinta**

822

1 A Not in front of me.

2 (Counsel confer.)

3 Q I show you this document. Does it help you refresh  
4 your recollection as to the time you put down on your  
5 report?

6 A Yes.

7 Q And look at the top portion of the report, sir.

8 A I see it.

9 Q Okay.

10 Do you reference that JPG video as being  
11 recorded at 0620 hours?

12 A 0620 p.m., sir.

13 Q Look at I, sir. Not 1, but I.

14 A Yes. I see it.

15 Q Do you refer to it as 0620 hours, yes or no?

16 A I did, yes.

17 Q When he described in more detail that file, you make  
18 reference to it once again, don't you?

19 A Yes.

20 Q And that would be a number one under I; is that  
21 right? Or I-1?

22 A The 6:20 is reference to item 2, A.

23 Q Number two, yes, correct.

24 Now, the number one file -- let me take it one  
25 step back, sorry.

**Forrestal-Cross/LaPinta**

823

1                   You testified on direct examination as the time  
2     found metadata on the card; is that correct?

3     A     Yes.

4     Q     And you went as far as to say that you checked the  
5     date and the time on this metadata twice; is that right?

6     A     I did.

7     Q     And the date you found to be the accurate date when  
8     you checked it; is that right?

9     A     Correct.

10    Q     And the time was not accurate; is that correct?

11    A     Correct.

12    Q     Did you say that on the direct examination?

13    A     I don't remember if I did or I didn't.

14    Q     Well, the time was off by an hour and 12 minutes, was  
15    it?

16    A     Yes, it was.

17    Q     Now, when you obtained possession of this camcorder,  
18    and you looked at the time, that time was set sometime  
19    beforehand obviously; is that correct?

20    A     Correct.

21    Q     And as you sit here today, you don't know if it is  
22    the same type of time entry, if it was in the same  
23    camcorder, the same in the camcorder prior to the entry  
24    being made; is that correct?

25    A     No, I don't.

**Forrestal-Cross/LaPinta**

824

1 Q In other words, the time settings on that camcorder  
2 could have been changed after these videos were made; is  
3 that right?

4 A It is a possibility.

5 Q But you don't know if it was, right?

6 A I don't.

7 Q It could have happened, right?

8 A It may have.

9 Q So when you testified to the reliability of that date  
10 stamp and time, you can't testify with certainty that that  
11 was an accurate entry of date and time when it was set at  
12 the time this video was taken; is that correct?

13 A Based on my examination of that camera and my prior  
14 knowledge of forensics on other cameras over the years, I  
15 believe it to be accurate.

16 Q Well, let's talk about the information on the disk,  
17 on the card.

18 Does the data on the card indicate when the date  
19 had been changed?

20 A No, it doesn't.

21 Q Does the data on the card indicate when the time was  
22 changed?

23 A No, it doesn't.

24 Q You don't know whether that camera's date or time was  
25 changed once or 20 times, right?

Forrestal-Cross/LaPinta

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1 A No.

2 Q So it could have been changed a number of times  
3 before those videos were made; is that right?

4 A It could have.

5 Q And it could have been changed a number of times  
6 after the videos were made; is that right?

7 A Perhaps.

8 Q But yet your finding of that date and time in your  
9 expert opinion is accurate; is that right?

10 A Correct.

11 Q Let's refer to the data you recovered that were  
12 stills that were time stamped 9/10 of 10 --  
13 September 10th, 2010. All right?

14 A Yes.

15 Q And your report doesn't have that right date listed  
16 first; is that right?

17 A One of the typos.

18 Q You wrote 9/10/14?

19 A Yes.

20 Q Clearly a mistake, right?

21 A Yes.

22 Q Is there anything else that is a mistake on that  
23 entry -- withdrawn.

24 A I believe there was another typo of the date and  
25 time.

**Forrestal-Cross/LaPinta**

826

1 Q Let me draw your attention to it.

2 Not only is there another typo on the date and  
3 time, but you actually had a typo on the actual identity  
4 of the file, don't you?

5 A If you point it out to me.

6 Q Look at your entry on I-1.

7 A I see it.

8 Q Under the mistaken date of 9/10/14, right?

9 Look at A.

10 A I see it.

11 Q You testified on direct examination that the file was  
12 listed as HDV, underscore, 043 dot MP 4; is that correct?

13 A Yes.

14 Q And that is not the correct address; is that correct?

15 A It should have been two zeros, zero zero four.

16 Q You made a mistake in A by writing one zero, right?

17 A Yes.

18 Q You made a mistake in B by also misstating the  
19 correct title to that; is that correct?

20 A Right.

21 Q And you also made a mistake in C; is that right?

22 A Right.

23 MR. LaPINTA: Now, counsel would stipulate that  
24 the date of September 10th, 2010 is a Friday.

25 (Whereupon, at this time there was a pause in



**Forrestal-Cross/LaPinta**

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1 the proceedings.)

2 MR. BODE: It is a Jewish holiday.

3 MR. LaPINTA: Yes. And I presume you are Jewish  
4 then; is that what you are saying?

5 (Counsel confer.)

6 MR. LaPINTA: Would you testify and would you  
7 agree that 9/10/10 is a Friday?

8 MR. BODE: Yes.

9 MR. LaPINTA: Would you stipulate that 1/19/11  
10 is a Wednesday?

11 MR. BODE: Yes.

12 THE COURT: Let me explain to the jury what a  
13 stipulation is.

14 A stipulation is when the parties agree that a  
15 certain fact is true. And you can accept those facts as  
16 true. But what weight you give to those facts is  
17 obviously up to the jury.

18 Q With regard to the videos you found on the camcorder,  
19 there is no time stamp on the actual video when you see  
20 it, right?

21 When you see the videos, is there a date of a  
22 time stamp that you can visually see?

23 A No.

24 Q Now, when we speak of the dates you brought to our  
25 attention, 9/10/10, the correct time if it was accurately

**Forrestal-Cross/LaPinta**

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1 entered would be 2:27 p.m.; is that correct?

2 A Yes.

3 Q And when we speak of the date January 19th, 2011,  
4 that is the -- if that is the accurate date, the accurate  
5 time would be 5:08 p.m.; is that correct?

6 A Yes.

7 Q Now, when you did the search warrant of the house and  
8 you found this camcorder, as an experienced detective in  
9 computer crimes you are well aware of the numerous other  
10 types of investigative forensic procedures that could be  
11 used on evidence, aren't you?

12 A I don't know what you are talking about.

13 Q Well, you are an experienced detective in narcotics  
14 as well; is that correct?

15 A In the past, yes.

16 Q And you know about crime labs that are around here?

17 A Yes.

18 Q Suffolk County has one, the FBI has one, right?

19 A Yes.

20 Q And they are capable, these crime labs, of doing a  
21 fingerprint identification on objects; is that right?

22 A Yes.

23 Q In your scope of many years as a detective,  
24 fingerprint examination can be a very useful form of  
25 evidence that you can use against somebody; is that right?

Forrestal-Cross/LaPinta

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1 A Yes.

2 Q And you know the difference between a latent print  
3 and what the characteristics of a print are; is that  
4 correct?

5 A I do.

6 Q And a fingerprint is unique to the person who has it,  
7 right?

8 A Correct.

9 Q And there was no fingerprint evidence retrieved from  
10 this camcorder; is that correct?

11 A Not to my knowledge.

12 Q Not on the bag that was carrying it; is that right?

13 A I don't know if that would have supported  
14 fingerprints.

15 Q All right.

16 Not on the camcorder itself; is that right?

17 A Right.

18 Q And obviously you have to hold the camcorder to use  
19 it, right?

20 A Right.

21 Q Would you agree, sir, there are other resources aside  
22 from forensics that are useful to other investigators like  
23 yourself, like cell phone records that we have already  
24 discussed, right?

25 A Yes.

**Forrestal-Cross/LaPinta**

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1 Q And how about bank records?

2 Is that relevant in the terms of purchases of  
3 various electronic equipment?

4 A Depending on the investigation.

5 Q Obviously items retrieved here had to have been  
6 purchased; is that right?

7 A Theoretically.

8 Q Well, didn't you find receipts here?

9 A I didn't personally find receipts.

10 Q Are you aware that receipts were found in this case?

11 A I'm aware items were seized during the search  
12 warrant, yes.

13 Q Did you do any banking investigation as far as other  
14 electronic equipment that may have been purchased by  
15 Mr. Valerio that you did not seize?

16 A That was not my part in this case. It was forensics.  
17 I was the forensic person in this case.

18 Q But you are a member of this team, aren't you?

19 A I am.

20 Q And you get together with the other members of the  
21 team to discuss the investigation; is that right?

22 A I do.

23 Q And you have a specialty, and Agent Troyd has a  
24 specialty, and Agent Messineo has a specialty, and  
25 together you discuss where this investigation is going to

**Forrestal-Cross/LaPinta**

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1 go; is that right?

2 A In this particular case that was not my place.

3 Q Your place was limited here in your opinion to just  
4 the forensic examination?

5 A That is my part in this case, yes.

6 Q And you were, however, present during the questioning  
7 of the defendant; is that right?

8 A Yes.

9 Q And you were present during the execution of the  
10 search warrant, weren't you?

11 A I was.

12 Q Are you aware in your experience in this  
13 investigation whether any bank records of Mr. Valerio was  
14 obtained anywhere?

15 A I'm not aware.

16 Q No bank records were obtained in the search of the  
17 house that proved to be relevant to this investigation; is  
18 that right?

19 A Not that I recall.

20 Q No credit card records were obtained in this case to  
21 obtain relevant information in your investigation; is that  
22 right?

23 A There was a reference to telephone -- credit cards and  
24 even banking information retrieved from the hard drive email.

25 Q So you had the information available, didn't you?

**Forrestal-Cross/LaPinta**

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1 A From the emails, yes.

2 Q And you retrieved those emails as the computer expert  
3 in this case?

4 A I did.

5 Q So you had the name of the bank, correct?

6 A In some cases, yes.

7 Q And the bank account numbers; is that right?

8 A There were account numbers, yes.

9 Q So it would have been very easy, whether it is you or  
10 Agent Troyd or Messineo, to obtain those records because  
11 you had the information right there, right?

12 A Again, it is not my part in this case.

13 Q I'm not asking if it was. But the information was  
14 right there, right?

15 A I had resolved emails, yes.

16 Q You didn't have to search to find this information,  
17 it was right in front of you in the data; is that correct?

18 A It was in the emails recovered, yes.

19 Q In trying to ascertain as to whether there were other  
20 electronic devices that you did not seize, did you look  
21 into any type of local computer stores to find out whether  
22 Mr. Valerio purchased other items of electronics?

23 A No.

24 Q You issued subpoenas on other computer manufacturers  
25 in the past?

**Forrestal-Cross/LaPinta**

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1 A Yes.

2 Q And you are aware how to do that?

3 A Yes.

4 Q Effortless, correct? Easy to do?

5 A Not effortless.

6 Q Easy to do with respect to other things you are  
7 required to do; is that right?

8 A Somewhat.

9 Q There are a number of different phone carriers out  
10 there, aren't there?

11 A There are.

12 Q And to avail yourself to the thoroughness of the  
13 investigation to see whether there were other phones  
14 involved besides the ones that you recovered, did you do  
15 any investigation of other phone carriers?

16 A That is not my position in this case.

17 Q Did you recommend to do other investigation of other  
18 phone carriers?

19 A I did not.

20 Q Do you know whether other agents in this case did  
21 investigations of other phone carriers?

22 A I don't know.

23 Q There was a CD presumably mailed to Mr. Valerio. Do  
24 you remember that?

25 A Yes.

**Forrestal-Cross/LaPinta**

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1 Q And I believe Special Agent Angelini received a copy  
2 of that CD; is that correct?

3 A Again, I don't know that.

4 Q Did you ever have in your possession a CD that was  
5 part of this investigation?

6 A I have been given copies of CDs made during the  
7 investigation.

8 Q Did you conduct a forensic examination on those CDs?

9 A On the ones provided by the Special Agent?

10 Q The CD provided to Special Agent Angelini?

11 A I did not.

12 Q You never performed any forensic examination on that  
13 CD; is that your testimony?

14 A Yes.

15 Q Well, in your experience in investigating and doing  
16 forensic examinations on CDs, would CDs sometimes have a  
17 date stamp on them?

18 A The CD itself?

19 Q The videos contained on the CDs, would they sometimes  
20 have a date stamp on the videos?

21 A Yes.

22 Q You don't know if that took place?

23 A No.

24 Q Would they sometimes have a time stamp, in terms of  
25 the time of the video?



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1 A Yes.

2 Q And would they have any indication of perhaps where  
3 they would be?

4 A In some cases, yes.

5 Q And none of that was done in this case; is that  
6 right?

7 A I received a copy of the CD.

8 Q None of that evaluation was obtained from that CD?

9 A I don't know what -- I have no knowledge of what was  
10 done with that CD.

11 Q Because you didn't do an investigation on it, right?

12 A I received a copy of the CD.

13 Q Detective, from the copy of the CD that you received,  
14 did you do any forensic evaluation on the CD? Yes or no?

15 A No.

16 Q There were a number of child pornography videos --

17 MR. LaPINTA: Would you mind if I break?

18 THE COURT: Yes.

19 I have other matters on, so we will adjourn  
20 until 2:15.

21 So you will have an unusually longer lunch.

22 Do not discuss the case.

23 (Whereupon, at this time the jury leaves the  
24 courtroom.)

25 (Luncheon Recess.)

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*HARRY RAPAPORT, CERTIFIED REALTIME REPORTER  
OFFICIAL COURT REPORTER*

**Forrestal-Cross/LaPinta**

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A F T E R N O O N      S E S S I O N

(Whereupon, the following takes place in the  
absence of the jury.)

THE COURT: Please be seated.

Bring the jury in.

You have your expert waiting?

MR. LaPINTA: Yes.

THE COURT: All right.

MR. LaPINTA: And the second witness as well.

THE COURT: How long is your expert?

MR. LaPINTA: Certainly not as long as Detective  
Forrestal. I would say a half an hour probably.

THE COURT: All right.

(Whereupon, the jury at this time entered the  
courtroom.)

THE COURT: Please be seated.

Members of the jury, we are ready to continue.

Go ahead, Mr. LaPinta.

MR. LaPINTA: Thank you, your Honor.

BY MR. LaPINTA:

Q Good afternoon, Detective Forrestal.

A Good afternoon, counsel.

Q You left off with respect to your various activities

**Forrestal-Cross/LaPinta**

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1 as the forensic tech involved in this investigation.

2 I now want to direct you to your role in  
3 examining the emails and attachments that were obtained  
4 via the Cablevision optonline subpoena.

5 Are you familiar with those materials?

6 A I viewed them, yes.

7 Q Would you say that you have a good working knowledge  
8 of that material?

9 A No.

10 Q Would you say you took the time to review those  
11 emails to learn about the facts of the case?

12 A I reviewed them.

13 Q Okay.

14 A Just briefly.

15 Q Okay.

16 You certainly viewed the images sent via  
17 attachments to emails from the Kalichenko email address;  
18 is that correct?

19 A I did.

20 Q In fact, those emails is what you used to compile the  
21 images you showed to this jury; is that correct?

22 A Yes.

23 Q When you reviewed the emails of child pornography,  
24 would you agree with me that the emails of child  
25 pornography did not have on the email a time stamp?

**Forrestal-Cross/LaPinta**

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1 A Correct.

2 Q Did not have a date stamp?

3 A Did not have a metadata stamp.

4 Q On the video could you see a time or date stamp? Yes  
5 or no?

6 A No, not on the time, on the video itself.

7 Q And by viewing the emails with the child pornography,  
8 you could not determine where those videos were made; is  
9 that correct?

10 A Correct.

11 Q And you could not determine only by viewing those  
12 videos when those emails were made, correct?

13 A Correct.

14 Q You never met Olena Kalichenko; is that correct?

15 A Correct.

16 Q You never met the child in the video; is that  
17 correct?

18 A Yes.

19 Q You have no first-hand knowledge whether the child in  
20 the video is even related to Olena Kalichenko; is that  
21 correct? First-hand knowledge.

22 A Through the document contained on the recovered  
23 material, in viewing that, yes.

24 Q Besides the information on the emails, do you know  
25 that this child was related to Olena Kalichenko?

Forrestal-Cross/LaPinta

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1 A Well, that --

2 Q Aside from that, sir?

3 A Besides that, no.

4 Q You have no first-hand knowledge besides the videos  
5 that her name was [REDACTED], is that correct?

6 The emails, sorry.

7 A Aside from the email, no.

8 Q Aside from the email you have no knowledge that the  
9 child is [REDACTED]?

10 A From the document related to the emails, yes.

11 Q When I say the emails, I mean the document in the  
12 emails.

13 A There is a difference. The attachments and the  
14 emails, there are official records attached, and I would  
15 say through those records I know the child to be [REDACTED].

16 Q Aside from the emails and attachments, do you know  
17 her name to be [REDACTED] [REDACTED], or whatever her name is?  
18 Do you know her to be [REDACTED] aside from the attachments  
19 and the video and the emails?

20 A I know her to be [REDACTED], yes.

21 Q The subject child pornography videos were all  
22 attached as attachments to emails, aside from the CD-ROM  
23 that was evidently mailed; is that correct?

24 A Correct.

25 Q And an attachment to an email could be in the form of

**Forrestal-Cross/LaPinta**

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1 a video or a document; is that right?

2 A A document, yes.

3 Q And it is not uncommon to send videos as attachments  
4 to emails; is that correct?

5 A Yes.

6 Q And aside from the date that an email is sent, would  
7 you agree that the date the email is sent isn't  
8 necessarily the date that a document or email is created?

9 A True.

10 Q A document or video that is included in an email can  
11 be made at any time before that email is sent; is that  
12 correct?

13 A True.

14 Q It can be made a minute before or a day before; is  
15 that correct?

16 A Correct.

17 Q And it could be made a month before or a year before,  
18 correct?

19 A Correct.

20 Q In your report you state that the child is two years  
21 of age. Do you remember that?

22 A I do.

23 Q That fact which you state in your report is your  
24 opinion; is that correct?

25 A Correct.

**Forrestal-Cross/LaPinta**

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1 Q In working with Agent Troyd, are you aware that the  
2 sworn document he filed with the Court, he wrote that the  
3 child was three years old? Are you aware of that?

4 A No.

5 Q Have you read the search warrant affidavits in this  
6 case?

7 A I have.

8 Q Have you read the search warrant affidavits submitted  
9 to the Court on January 27th, 2014?

10 A I read it once, yes.

11 Q Okay.

12 Do you know that that sworn affidavit by  
13 Special Agent Troyd indicates that the child in the video  
14 is three years old? Do you know that?

15 A I don't remember that.

16 MR. LaPINTA: Bates stamp 135.

17 (Counsel confer.)

18 MR. LaPINTA: You can do it on redirect. Don't  
19 tell me how to question the witness, okay?

20 Q Showing you the document in front of you --

21 (Handed to the witness.)

22 A I see what, sir?

23 Q Looking at what is in front of you --

24 A Yes.

25 Q Bates stamp 135; is that right?



**Forrestal-Cross/LaPinta**

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1 A Yes.

2 Q And does that refresh your recollection as far as  
3 Agent Troyd stating the age of the child to be  
4 approximately three years old; is that right?

5 A Approximately.

6 Q Three years old?

7 A Approximately three years old is what he says.

8 Q That is his language, approximately three years old?

9 A Yes.

10 Q And your language is she was approximately two years  
11 old?

12 A Yes.

13 Q In fact, neither you nor Agent Troyd knows the age of  
14 that child in the video?

15 A Know the age of the child exactly, no.

16 Q The following questions I'm going to ask you have to  
17 do with your experience in being a child pornography  
18 investigator. And excuse the nature of this question,  
19 please.

20 In your investigations of child pornography, you  
21 come across a wide variety of child pornography; do you  
22 agree?

23 A Agreed.

24 Q You found child pornography in a number of different  
25 locations, haven't you?

**Forrestal-Cross/LaPinta**

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1 A Geographic locations you are talking about?

2 Q Technology locations?

3 A Yes.

4 Q You found pictures of child pornography in people's  
5 homes; is that right?

6 A Yes.

7 Q And you found pictures of child pornography on cell  
8 phones?

9 A Yes.

10 Q Computers?

11 A Yes.

12 Q On laptops?

13 A Yes.

14 Q On towers?

15 A Yes.

16 Q On iPads?

17 A Yes.

18 Q Tablets, right?

19 A Tablets, yes.

20 Q And in the course of your investigation, you have  
21 come across child pornography of a number of different  
22 types? And what I mean by types is, I mean different ages  
23 of children; is that right?

24 A Right.

25 Q And children doing different acts in the videos; is

**Forrestal-Cross/LaPinta**

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1     that correct?

2     A     Yes.

3     Q     Some of the photographs in the videos are merely  
4     containing naked children; is that correct?

5     A     Sometimes, yes.

6     Q     And some of the images of videos contain sex acts  
7     with children; is that correct?

8     A     Correct.

9     Q     As an experienced investigator, you also come across  
10    many videos and photographs of oral sex acts with  
11    children, haven't you?

12    A     I have.

13    Q     Would you say you come across quite a bit of it in  
14    your experience?

15    A     Yes.

16    Q     Unfortunately?

17    A     Unfortunately.

18    Q     And this is certainly not the first time you have  
19    come across that; is that right?

20    A     Right.

21    Q     And in reviewing these photos and videos of child  
22    pornography, they have included unfortunately objects  
23    during the sex acts, yes?

24    A     Yes.

25    Q     And sometimes the objects include toys, right?

**Forrestal-Cross/LaPinta**

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1 A Yes.

2 Q Sometimes the objects include adult sex toys, right?

3 A Yes.

4 Q Sometimes the objects include common things people  
5 use, such as hairbrushes, correct?

6 A Right.

7 Q And some of the video that you come across as an  
8 investigator unfortunately also has included many times  
9 oral sex on children; is that correct?

10 A Correct.

11 Q This is not the first time you have seen child  
12 pornography in the setting of a shower; is that correct?

13 A True.

14 Q You have seen that many times before as well; is that  
15 correct?

16 A I have.

17 Q So as far as the content of this child pornography in  
18 this case, you have seen it happening over and over again  
19 on other unrelated cases; is that correct?

20 A I have viewed child pornography various times.

21 Q Right. Unfortunately viewed quite a bit of it; is  
22 that correct?

23 A Yes.

24 Q And a lot of this stuff you have viewed in the past  
25 besides this case; is that correct?

**Forrestal-Cross/LaPinta**

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1 A Yes.

2 Q And let's talk about the scope of your investigation  
3 as a computer forensic expert.

4 You would agree that there are a number of  
5 different databases out there for you to conduct an  
6 investigation, aren't there?

7 A Type of?

8 Q Well, there are email databases, right?

9 A There is public record aggregators, yes.

10 Q Like Cablevision is a database you can access?

11 A They have records I can subpoena, yes.

12 Q And there are also social media databases that you  
13 can also investigate; is that right?

14 A That's right.

15 Q And in the course of your experience, you have used  
16 information from social media sources, have you?

17 A I have.

18 Q And what are some of the social media sources that  
19 you use?

20 A Facebook, Instagram.

21 Q What else?

22 A As far as social media sites?

23 Q Yes.

24 A I have pretty much touched every one that is out  
25 there.

**Forrestal-Cross/LaPinta**

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1 Q Have you ever looked at the Skype database?

2 A I have conducted investigations in Skype, yes.

3 Q Well, let's take Facebook.

4 Did you conduct any investigation into the  
5 database of Facebook relating to Olena Kalichenko in this  
6 case?

7 A I did not.

8 Q By the way, you are aware that Facebook is accessible  
9 throughout the world, aren't you?

10 A Yes.

11 Q The United States in addition to overseas; is that  
12 right?

13 A Yes.

14 Q In addition to the Ukraine; is that correct?

15 A It is worldwide.

16 Q Now, Instagram is the same thing, accessible in the  
17 United States as well as overseas?

18 A Yes.

19 Q As well as Skype, right?

20 A Yes.

21 Q And did you now come to learn in the course of this  
22 investigation that Helena Kalichenko used a Skype account?

23 A Yes.

24 Q Did you employ any investigative measures to obtain  
25 information about Helena Kalichenko's Skype account?

**Forrestal-Cross/LaPinta**

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1 A No, not me. That is not my position.

2 Q And would you agree with me that if Skype were used  
3 in this case, the database would include relevant  
4 information regarding this investigation, correct?

5 A Depending on the type of information sought, perhaps.

6 Q Helena Kalichenko used predominantly one -- by the  
7 way, did you know her to have a Facebook account?

8 A Pardon me?

9 Q Did you know Helena Kalichenko or Olena Kalichenko to  
10 have a Facebook account?

11 A I don't know.

12 Q Did you look into it?

13 A No.

14 Q So she could, but you don't know if she does?

15 A I didn't look into it.

16 Q Regarding the majority of emails sent by Olena  
17 Kalichenko, you are aware of that email address?

18 A Yes.

19 Q What is it?

20 A I couldn't spell it out specifically in front of me.  
21 It is a dot RU.

22 Q And the dot RU indicates an email server database in  
23 the Ukraine?

24 A It is actually Russia.

25 Q Russia?

**Forrestal-Cross/LaPinta**

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1 A Yes.

2 Q And you didn't obtain, for whatever reasons, you  
3 didn't obtain any information from that RU database, email  
4 database, right?

5 A No.

6 Q Did you also come to learn in the course of your  
7 investigation that Olena Kalichenko used a second email  
8 address? Yes or no?

9 A No.

10 Q Would today, just right now, be the first time that  
11 you learned that Olena Kalichenko also used the address  
12 Bright, B-R-I-G-H-T, Helena, H-E-L-E-N-A, 68@gmail.com?

13 A This is the first time.

14 Q Were you given any documents that Agent Angelini  
15 received from Olena Kalichenko?

16 A No.

17 Q Did you inquire of your co-investigators, Agent  
18 Troyd, Agent Messineo, Agent Angelini, whether Olena  
19 Kalichenko used other emails besides the RU email?

20 A I did not.

21 Q Would you agree with me that if a second email was  
22 used by Helena at or around the same time of this  
23 investigation, that it would contain essentially useful  
24 information for you?

25 A It would depend.



**Forrestal-Cross/LaPinta**

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1 Q Well, it would depend on whether she used it, right?

2 A Yes.

3 Q It would depend upon whether you knew she would be  
4 using that email, right?

5 A It would depend if it was recovered in the case.

6 Q Well, let me show you this document. Just look at  
7 it.

8 (Handed to the witness.)

9 Q I will show you two documents. Take a look at them  
10 and do not comment on it.

11 (Handed to the witness.)

12 (Counsel confer.)

13 Q Look up when you are finished.

14 Your prosecutors made reference to the fact that  
15 these exhibits were introduced in evidence.

16 Is this the first time you have come to learn  
17 that Olena Kalichenko used the email address  
18 brighthelena68@gmail.com?

19 A That I recall, yes.

20 Q And you could have come cross that?

21 A I don't remember, no.

22 Q And just like you subpoenaed the Cablevision records  
23 of Joseph Valerio, you could have subpoenaed the Gmail  
24 records of Olena Kalichenko; is that correct?

25 A As the forensic person in this case I wouldn't be

**Forrestal-Cross/LaPinta**

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1 doing subpoenas.

2 Q The team that you are working with, okay? Somebody  
3 subpoenaed these records, right?

4 A Yes.

5 Q Weren't you involved in this decision making as to  
6 where this investigation goes?

7 A I was not the lead investigator in this case.

8 Q I'm not asking you if you were.

9 Were you involved in decision making as to where  
10 this investigation goes? Yes or no?

11 A No.

12 Q And no one told you about this Gmail account; is that  
13 right?

14 A Not that I recall.

15 Q All right.

16 Would you agree with me that Gmail is a United  
17 States company, right?

18 A Gmail?

19 Q Gmail.

20 A Yes.

21 Q And it is data -- that data from Gmail is obtained  
22 initially by a subpoena; is that correct?

23 A Correct.

24 Q Just like you retrieved emails containing child  
25 pornography on an email account, a Gmail account could

**Forrestal-Cross/LaPinta**

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1 also contain child pornography?

2 A Yes.

3 Q And an email account of Olena Kalichenko may even  
4 contain the same images of child pornography; is that  
5 right?

6 A It may or may not.

7 Q And the dates that those emails could have been sent  
8 would have been relevant to you, wouldn't they?

9 A Yes.

10 Q And would you agree with me that if those videos that  
11 you retrieved from this Cablevision account were  
12 previously sent to other people in the Gmail account, that  
13 that is a big fact in this case? Agreed

14 A It could be.

15 Q If those emails were sent out with attachments of  
16 child pornography even before Olena Kalichenko knew  
17 Mr. Valerio, it would be important information; is that  
18 correct?

19 A Yes.

20 Q And it would be because those emails were made before  
21 even meeting Joe? Yes or no.

22 A Repeat the question.

23 Q Those videos, if they're attachments to the emails,  
24 could have been made or sent before she even met Joe; is  
25 that right?

**Forrestal-Cross/LaPinta**

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1 A Based on the age of the child I viewed, and the email  
2 dates that I saw, I don't believe so.

3 Q Okay.

4 So the age of the child could not have been a  
5 factor in her sending child pornography with respect to  
6 that email account?

7 A No, that is not what I said. Not what I said.

8 Q So the point is she could have sent child pornography  
9 with that child previous to even meeting Joseph Valerio;  
10 is that correct? Yes or no?

11 A Yes.

12 Q That data, if you would have subpoenaed the account,  
13 could have identified other people that potentially were  
14 sent child pornography; is that correct?

15 A Again, counselor, it is not my position to  
16 subpoena --

17 Q You could have obtained that information if it  
18 existed; is that correct?

19 A Under the hypothetical, yes.

20 Q Now, did you come across information that Olena  
21 Kalichenko had admitted she sent child pornography to  
22 other men?

23 A I'm aware of that, yes.

24 Let me backtrack on that. Not to other men, to  
25 Joseph Valerio.

**Forrestal-Cross/LaPinta**

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1 Q Besides -- well, other men means other people aside  
2 from Joseph Valerio; other men?

3 A No. I misheard.

4 I am aware she said she sent child pornography  
5 to Joseph Valerio.

6 Q Were you aware from Agent Troyd that child  
7 pornography was sent by Helena Kalichenko to a man by the  
8 name of Daniel Ditmeyer, yes or no?

9 A No.

10 Q You did not know that?

11 A No.

12 Q This is the first time you heard that name Daniel  
13 Ditmeyer, yes?

14 A Yes.

15 Q So you conducted no investigation of a Daniel  
16 Ditmeyer; is that fair?

17 A Not specifically, no.

18 Q No email account verification of a Daniel Ditmeyer?

19 A Not in the data I recovered.

20 Q Or any search of any home or electronics of his; is  
21 that correct?

22 A Correct.

23 Q So you are unable to tell us whether Olena Kalichenko  
24 sent emails of a child to a Daniel Ditmeyer?

25 A I'm not able to tell you if Olena Kalichenko sent any

**Forrestal-Redirect/Kabrawala**

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1 child pornography to anyone but the defendant.

2 MR. LaPINTA: Thank you, detective. Nothing  
3 further.

4 THE COURT: Redirect?

5 MR. KABRAWALA: Yes, your Honor.

6

7 REDIRECT EXAMINATION

8 BY MR. KABRAWALA:

9 Q Detective, you were questioned about whether you  
10 reviewed emails that were obtained from Kalichenko by  
11 Special Agent Angelini.

12 Do you recall that line of questioning?

13 A Yes.

14 Q I'm showing you the email -- one of the emails that  
15 counsel was referring to.

16 (At this time a document was exhibited on the  
17 courtroom screen.)

18 MR. KABRAWALA: This is Government's Exhibit 2.

19 Q Do you see that?

20 MR. KABRAWALA: All of these emails are in  
21 evidence.

22 A I do.

23 Q Who is it from?

24 A This is from -- from this point here?

25 Q Right here.

**Forrestal-Redirect/Kabrawala**

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1 A It is from Helena Bright.

2 Q I'm sorry.

3 Right before -- below where it says forwarded  
4 message.

5 A Yes.

6 Q Who is the email from?

7 A Joeval5@optonline.net.

8 Q Take a look at the email. I will try to lay it flat.  
9 Why don't you read it.

10 (Whereupon, at this time there was a pause in  
11 the proceedings.)

12 MR. KABRAWALA: I will read it. I will read  
13 from right here.

14 Let me know if I get it wrong.

15 This is from joeval5@optonline.net. It is dated  
16 July 6, 2013.

17 To Helena Bright. It is  
18 brighthelena68@gmail.com.

19 I wanted to ask you if you would also help me  
20 with an adoption of a child from your country. Can you  
21 help me? Just by saying we are a couple looking to adopt?  
22 I will give you a solid commission for your help, that you  
23 know.

24 My son now is off to college upstate. My  
25 daughter is in South Africa, whom I seldom see, which I

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1 want to challenge because I can afford to bring her up in  
2 her life. Etcetera, etcetera.

3 If our meeting is not possible, can you help me  
4 with an adoption, Helena?

5 Does this appear to be about -- what does this  
6 email appear to be about?

7 A It is --

8 MR. LATO: Objection.

9 THE COURT: Sustained.

10 Q Is it fair to say that nothing in this email refers  
11 to sending images of child pornography back and forth?

12 A No, it doesn't.

13 Q I'm showing you now what is another portion of  
14 Government's Exhibit 2.

15 (At this time a document was exhibited on  
16 courtroom screen.)

17 Q This is from joeval5@optonline.net, dated July 8th,  
18 2013. The subject is re, adoption process, to Helena  
19 Bright, at brighthelena68@gmail.com.

20 I will just read it and you tell me I miss a  
21 word or anything.

22 Thanks for the feedback. Like I mentioned, I  
23 presently have no children in my life now to enjoy at my  
24 age. I have the means, the home and the comforts for me  
25 to raise a child. I'm a great father and it seems now



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1       that I'm just a provider, that's all.

2               I want to be able to teach my new daughter all  
3       the talents I have passed on to my son and daughter.  
4       There will be an au pair with me as well to tend to a  
5       little girl's needs.

6               Do you know what an au pair is?

7       A     Yes.

8       Q     What is an au pair?

9       A     It is a live-in --

10              MR. LATO:  Objection.

11              MR. LaPINTA:  Objection.

12              THE COURT:  Sustained.

13       Q     I have a girl here now that's qualified.  If not her,  
14       later on there will be some other qualified helper or  
15       woman with me.  The won't (sic) only be for me to enjoy  
16       and raise.  When I plan an action, I think it through.

17              MR. LaPINTA:  Objection.

18              Beyond the scope of the purpose that this email  
19       was used to impeach.

20              THE COURT:  Why don't you approach.

21

22              (Whereupon, at this time the following took  
23       place at the sidebar.)

24              THE COURT:  I don't think it is beyond the scope  
25       in the sense that you suggested that there is some

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1       evidentiary value to that account. So I think it is fair  
2       for the government to do that.

3               I don't think you need to read the whole email.  
4       At some point this is argument you can do in summation.  
5       You can go through one e-mail. I don't want to waste time  
6       going through all these emails.

7               MR. KABRAWALA: Yes.

8               MR. LaPINTA: Thank you.

9               THE COURT: Let's move on.

10

11               (Whereupon, at this time the following took  
12       place in open court.)

13       Q       Is it fair to say that this email that I just read  
14       aloud doesn't concern the exchange of child pornographic  
15       videos or emails?

16       A       Correct.

17       Q       And you testified on direct about a number of child  
18       pornography emails or videos recovered from the  
19       defendant's computer, and those were sent by a person  
20       named Olena Kalichenko. Do you recall that?

21       A       Yes.

22       Q       And they were sent in an email address that ended in  
23       dot RU?

24       A       Yes.

25       Q       Do you recall that?

**Forrestal-Redirect/Kabrawala**

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1 A Yes.

2 Q And did you find any emails on the defendant's  
3 computer of child pornography that were sent from a Gmail  
4 account?

5 A No.

6 Q You were asked on cross-examination about a number of  
7 electronic devices seized from the defendant's house. Do  
8 you recall that?

9 A Yes.

10 Q And one with an Apple laptop computer?

11 A Yes.

12 Q And there was no child pornography found on that  
13 device; correct?

14 A Yes.

15 Q And there was no child pornography found on certain  
16 other devices; is that correct?

17 A Correct.

18 MR. KABRAWALA: I am publishing what is admitted  
19 as Government's Exhibit 555, and directing your attention  
20 to page -- to line 18.

21 This appears to be a Viber text message from  
22 December 7th, 2013.

23 Please read aloud the contents of the message.

24 A Referring to the 6:45:18?

25 Q Yes.

**Forrestal-Redirect/Kabrawala**

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1 A Okay Joseph, I am fed up with you. I am sending all  
2 the videos I made for you with [REDACTED] to the FBI. That's  
3 the only piece needed to get a court order to arrest you.  
4 No more mercy for you.

5 Q I will go to the next page and I will be drawing your  
6 attention to line 32.

7 A message from December 11th, 2013.

8 Would you please read out loud the message right  
9 here at 9:22:31.

10 A Joseph, I now have eight different videos I made for  
11 you not counting the one I sent through DHL. FBI is  
12 asking me every single day either I am sending additional  
13 evidence to them. I don't think you really understand how  
14 serious the matter is. I am asking you for the last time  
15 would you like me to provide to the police everything I  
16 have or would you like to negotiate?

17 Q Is it fair to say that based upon those two text  
18 messages, that the defendant had approximately eight  
19 weeks' notice that the FBI was coming for him?

20 A Yes.

21 MR. LATO: Objection.

22 THE COURT: Sustained.

23 The jury is to disregard it.

24 Q Is December 6th and December 11th, are those dates  
25 approximately seven to eight weeks before January 28th,

Forrestal-Redirect/Kabrawala

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1 2014?

2 A Approximately, yes.

3 Q And you also testified there wasn't computer  
4 information showing the defendant viewed any child  
5 pornography videos that were found on his computer; do you  
6 recall that?

7 A On that computer.

8 Q Other than the videos itself, do you recall that  
9 testimony?

10 A I do.

11 Q And I will just show you Government's Exhibit 559-A,  
12 as in Apple.

13 (At this time a document was exhibited on  
14 courtroom screen.)

15 Q Was this an email recovered from the defendant's  
16 computer?

17 A Yes.

18 Q And reading the highlighted portion, it says: I see  
19 you are bonding very well with [REDACTED].

20 Do you see that?

21 A Yes.

22 Q And the image -- I will now show you  
23 Government's Exhibit 303-A.

24 (At this time a document was exhibited on  
25 courtroom screen.)

**Forrestal-Redirect/Kabrawala**

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1 Q I'm publishing what is admitted as 303 Alpha.

2 It says: The videos you sent by cell phone  
3 camera are perfect and there is no need for the expense of  
4 another camera when you have done a terrific job with the  
5 cell phone camera.

6 MR. LaPINTA: Objection.

7 MR. KABRAWALA: I'm sorry, with the cell phone  
8 camera.

9 THE COURT: What is the objection?

10 MR. LaPINTA: The objection is the relevance of  
11 this evidence coming in on redirect when it wasn't the  
12 subject of cross.

13 THE COURT: Overruled.

14 Again, it is for a very limited reason and I  
15 will allow it.

16 MR. KABRAWALA: That is the reading, and I will  
17 read the next sentence.

18 I have a new cell phone which allows me to  
19 transfer the video to my email and the screen is bigger to  
20 view.

21 Q Did I read that correctly?

22 A Yes.

23 Q Does it appear from this email that in fact the  
24 defendant viewed the video sent to him?

25 A Yes.

**Forrestal-Redirect/Kabrawala**

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1 Q You were asked about a couple of typos found in your  
2 report; do you recall that?

3 A Yes.

4 Q And you were asked whether the file name HDV,  
5 underscore 00043, had a typo in it. Do you recall that?

6 A Yes.

7 Q And do you recall that you identified that file name  
8 with one less zero?

9 A Yes.

10 Q Do you recall that?

11 A Yes.

12 Q Was the image -- was that image found on the Samsung  
13 memory card in the defendant's house?

14 A It was.

15 Q And was it a fact that your report left out a zero,  
16 and does it change the fact that a young girl was depicted  
17 in there?

18 A No.

19 Q Does it change the fact --

20 MR. LaPINTA: Objection.

21 THE COURT: Sustained.

22 Q What if any impact does a typo leaving off one zero  
23 on the file name have on the approximate 30 videos found  
24 on the defendant's computer?

25 MR. LaPINTA: Objection.

**Forrestal-Redirect/Kabrawala**

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1 THE COURT: Sustained as to form.

2 Q Now, you were asked about the camcorder in evidence,  
3 Government's Exhibit 404.

4 You were asked if you did any fingerprint  
5 analysis on that device.

6 A Yes.

7 Q And you were asked if any -- did you conduct a  
8 physical examination of that camcorder?

9 A I did.

10 Q And what did you note about the physical condition of  
11 that camcorder, if anything?

12 A It is of reasonable good shape and it had black tape  
13 put over the front lens of it.

14 Q Above the lens area?

15 A Yes.

16 MR. KABRAWALA: Your Honor --

17 MR. LaPINTA: Objection to the series of  
18 questions regarding anything outside of fingerprints that  
19 I cross-examined on.

20 THE COURT: Why don't you approach now.

21

22

23

24

25



**Forrestal-Redirect/Kabrawala**

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1 (Whereupon, at this time the following took  
2 place at the sidebar.)

3 THE COURT: Where are you going with this?

4 MR. KABRAWALA: I want to show the jury that  
5 there is a piece of tape on it, and there was a physical  
6 examination done.

7 MR. LaPINTA: Forensic examination.

8 MR. BODE: Completeness of the investigation.

9 MR. KABRAWALA: Completeness of the  
10 investigation as to whether or not fingerprints were taken  
11 off of it. I want to know -- show there is tape on the  
12 device.

13 MR. BODE: It is blacked out as well.

14 THE COURT: I will sustain the objection.

15 This witness, I understand, and certainly some  
16 of this was done on cross-examination. But these are  
17 arguments you can make to the jury.

18 MR. BODE: The only thing, we can't make the  
19 argument now. The tape covers the spot. We need the  
20 detective to talk to us about pulling off the tape and he  
21 saw the LED tape was blacked out with a Sharpie and tape  
22 placed over it. We can't make that argument without the  
23 testimony.

24 THE COURT: He can describe what the camera is.  
25 But you can't ask his conclusions or opinion about that.

**Forrestal-Redirect/Kabrawala**

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1 That is argument.

2 MR. BODE: We can ask about the condition and  
3 that is what it is?

4 THE COURT: Yes.

5 MR. KABRAWALA: Can we have him stand up and  
6 show the jury?

7 THE COURT: Yes.

8 MR. KABRAWALA: Thank you.

9

10 (Whereupon, at this time the following takes  
11 place in open court.)

12 Q You testified you conducted a physical examination of  
13 the camcorder that is in front of you?

14 A Yes.

15 Q And that there is a piece of black tape on it?

16 A Yes.

17 Q Did you ever lift up the black tape?

18 A I did.

19 Q What if anything did you find?

20 A There is an LED light on the camera.

21 MR. KABRAWALA: Your Honor, with the Court's  
22 permission, can I have the witness step off the witness  
23 stand and to stand in front of the jury box to show it to  
24 the jury?

25 THE COURT: Yes.

**Forrestal-Redirect/Kabrawala**

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1 What exhibit number is that?

2 THE WITNESS: Sorry, sir?

3 THE COURT: What is the exhibit number?

4 THE WITNESS: This exhibit number is 404.

5 Q You can go ahead and lift off the tape.

6 A It is a little hard to see because it is dark on  
7 dark.

8 Q Why is it dark on dark?

9 A It looks like it has been written over with maybe  
10 magic marker.

11 MR. LaPINTA: Objection.

12 THE COURT: Sustained, sustained.

13 MR. LaPINTA: Let the record reflect that the  
14 witness is showing the camcorder to the members of the  
15 jury.

16 THE COURT: Yes.

17 THE WITNESS: Do you see that?

18 THE COURT: Don't say anything. Just show it to  
19 the jury.

20 (Whereupon, at this time there was a pause in  
21 the proceedings.)

22 Q You may step back on the witness stand.

23 (Witness resumes the witness stand.)

24 Q Two more questions.

25 You said that the black tape was covering an LED

**Forrestal-Redirect/Kabrawala**

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1 light?

2 A Yes.

3 Q Did you conduct an investigation into what that LED  
4 light does, and if so, what did it reveal?

5 A It revealed that it lights off -- it shows when the  
6 recording is taking place.

7 MR. KABRAWALA: Nothing further.

8 THE COURT: Recross?

9 MR. LaPINTA: No, thank you.

10 THE COURT: All right. You may step down.

11 THE WITNESS: Thank you.

12 (Whereupon, the witness leaves the witness  
13 stand.)

14 MR. KABRAWALA: Your Honor, the government  
15 rests.

16 THE COURT: Members of the jury, you heard that  
17 the government has rested its case. And that means they  
18 have completed their presentation of the evidence.

19 As I said in the beginning, I want to remind you  
20 that the burden of proof is on the government at all  
21 times. The defendant does not have to call any witnesses  
22 or put on any evidence whatsoever. Obviously he has the  
23 right to do so if he wishes. And defense counsel  
24 indicated they intend to present evidence to you. So we  
25 will take a break now and then begin that. Okay?

1 Do not discuss the case.

2 (Whereupon, at this time the jury leaves the  
3 courtroom.)

4 THE COURT: Please be seated.

5 Is there a motion by the defense?

6 MR. LATO: Yes, your Honor.

7 Your Honor, Rule 29, I'm making a general motion  
8 for a judgment of acquittal based on the government's  
9 failure to make out a case that would convince a  
10 reasonable jury that the defendant is guilty of the crimes  
11 charged in the indictment.

12 Specifically, though, I want to address some of  
13 the other counts, and this has to do with the attempt  
14 counts.

15 Counts 9 through 13 charge the attempted  
16 exploitation of a child. However, those attempt counts in  
17 terms of the dates also fall within count two, which is  
18 the actual sexual exploitation of the same child.

19 Count two lists a beginning date and a start  
20 date. It does not break out count two to an individual  
21 date or individual acts of exploitation of a child.

22 However, what happened in counts 9 through 13,  
23 it appears that what the government has done is that it is  
24 arguing to the jury that count two, the actual  
25 exploitation, occurred between April 1st, 2012 and

1 November 1st of 2012. And then with respect to counts 9  
2 through 13, cherry picking individual dates within that  
3 same period as to four attempts.

4 It seems to me if it is unclear as to whether it  
5 is an attempt and/or a complete count, the attempt should  
6 caret the subsequent count.

7 Beyond that, counts six through eight, also the  
8 attempt count with respect to the same child that fall  
9 outside the date or the period alleged in count two.

10 This is what it really comes down to with  
11 respect to an attempt. There is a distinction between an  
12 attempt and an overt act in furtherance of the conspiracy.

13 By all accounts it would seem that everything  
14 that would qualify as an attempt would also qualify as an  
15 overt act. But not everything that qualifies as an overt  
16 act would qualify as an attempt.

17 To be an attempt, your Honor, it has to have the  
18 mens rea to complete the crime by the defendant, and a  
19 substantial step to complete the crime.

20 With respect to the attempt counts, all of them,  
21 is there a substantial step each time to commit the same  
22 crime? By way of an example, I think it is clear that  
23 many videos were in fact made. And the defense really  
24 comes down to, is it really Joseph Valerio who had them  
25 made?

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1 By way of analogy, a person wants another person  
2 to commit a bank robbery and sends the person to a bank on  
3 five separate occasions, and for whatever reason the  
4 person goes to the bank and doesn't do a robbery that day.  
5 And each time the person goes to the bank it is certainly  
6 an overt act in terms of the actual bank robbery. But at  
7 the end when the person commits a bank robbery, it would  
8 seem unfair to categorize the five trips to the bank as  
9 five separate attempts. It is better to say attempt to a  
10 bank robbery and leave it to the jury as to whether it was  
11 one attempt or one completion of a crime. And that  
12 completes my presentation, your Honor.

13 MR. BODE: Does your Honor wish to hear from us?

14 THE COURT: Yes.

15 MR. BODE: Your Honor, the defense argument is  
16 insufficient for Rule 29.

17 The defense has clearly been hinting at arguing  
18 that some of these images were pre-made by Ms. Kalichenko  
19 prior to the defendant coming in contact with her, and as  
20 such he could not have committed the crime of exploitation  
21 because they were already made at that point.

22 Clearly, however, where he sends an email, each  
23 one of those attempts count to a particular email that is  
24 in evidence where he asks that specific acts be done to  
25 the child. He even calls it a script in one of the

1 emails, clearly providing a script for the child to be  
2 used and asking the child to be abused would constitute as  
3 an attempt at child pornography.

4 Moreover, here it is even stronger because he  
5 receives videos and acknowledges in the emails he got them  
6 and asks for more videos.

7 So clearly there is a substantial attempt. The  
8 email is a substantial step in an attempt, your Honor.

9 Bank robbery is a poor example, with due respect  
10 to Mr. Lato. If we wanted to use a bank robbery as an  
11 example, because he obtained it over a period of time and  
12 sent the emails over a period of time, it is more that he  
13 robbed the bank on one day and got a thousand dollars, and  
14 comes back a week later the for another thousand dollars  
15 and a week later another. I don't think that example  
16 works in this case.

17 For all those reasons and the light most  
18 favorable to the government, we believe the Rule 29 motion  
19 should be denied.

20 MR. LATO: Can I have the last word since it is  
21 my motion, your Honor?

22 THE COURT: Sure. This is your reply.

23 MR. LaPINTA: Because according to the  
24 government's case, Mr. Valerio is going through an  
25 intermediary, Ms. Kalichenko, who was the actual principal



1 doing the child pornography and Mr. Valerio sharing the  
2 same mens rea, aiding and abetting and by supplying the  
3 money and ordering it, and for Mr. Valerio to be guilty of  
4 an attempt, I believe Ms. Kalichenko as an intermediary  
5 must have the mens rea to complete the substantive crime.

6 There is no question that there is evidence here  
7 that Ms. Kalichenko did intend to make videos. My  
8 objection is breaking everything up into individual  
9 attempts.

10 Because if Ms. Kalichenko cannot be guilty of  
11 individual attempts, I don't know that Mr. Valerio can  
12 either.

13 THE COURT: All right.

14 I will reserve decision and place the decision  
15 on the record later. I just want to get through your  
16 witness today. And I wanted to get that done.

17 Let's take a break and then get started. All  
18 right?

19  
20 (Whereupon, a recess was taken.)  
21  
22  
23  
24  
25

1 THE COURT: Let's get the jury.

2 MR. BODE: The defense disclosed to us, your  
3 Honor, just a few moments ago, that their expert witness,  
4 Mr. Gibbs, has they believe a 2000 adjournment in  
5 contemplation of dismissal in a domestic violence case.  
6 In 2006 he was charged with a felony regarding cocaine and  
7 he pled it down to a misdemeanor possession.

8 We are just learning about it now. I sent the  
9 agent to get the rap sheet. We are not in a position to  
10 argue it yet. But clearly the cocaine conviction is  
11 relevant in terms of Mr. Gibbs. But we have not had a  
12 chance to formulate an argument yet. It was literally as  
13 your Honor was coming out, a couple of minutes before  
14 that.

15 THE COURT: When was the cocaine conviction?

16 MR. BODE: 2006.

17 THE COURT: And it was pled down to a possession  
18 of cocaine?

19 MR. BODE: Yes, charged with a felony and pled  
20 down to a possession. Obviously drug cases can mean  
21 different things. It could be use. Or it could be  
22 perception. Or if he was selling --

23 THE COURT: Do you know any details of the  
24 conviction or not?

25 MR. LATO: I can answer that, because I actually

1 spoke to the witness about it.

2 THE COURT: You can be seated.

3 MR. LATO: In 2005 it was a traffic stop and he  
4 had cocaine in the car and it was pled down. He didn't  
5 indicate if it was a sale or with intent to distribute or  
6 not. But it was pled down to a misdemeanor conviction for  
7 possession of cocaine. That is just it.

8 Now, I'm ready to make the argument if your  
9 Honor is ready why it should not come in.

10 THE COURT: No. Based on what I was told it  
11 would not come in. But I want the government to have the  
12 ability to look through it.

13 The government is precluded from making  
14 reference to it at this point.

15 MR. BODE: given the hour, we can always have  
16 him back on Wednesday.

17 THE COURT: If you were to come up with  
18 something that is relevant, I will allow you to recall him  
19 to impeach him.

20 MR. BODE: I can't believe the defense just came  
21 up with this five minutes ago. If they learned about it  
22 at lunch, we should have been told then to have a chance  
23 to address this.

24 MR. LaPINTA: I'm not aware of any obligation to  
25 tell him this. They have the guy's name or his CV. I'm

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1 not obliged to tell them about my witness' convictions.

2 THE COURT: I made my ruling. Let's bring the  
3 witness in at this point.

4 (Whereupon, the jury at this time entered the  
5 courtroom.)

6 THE COURT: Everyone be seated, please.

7 Members of the jury, as I indicated before the  
8 break, the government rested. The government has the  
9 burden of proof at all times. And there is no obligation  
10 on a defendant to present any evidence. They have a right  
11 to do so. Counsel has indicated they wish to present  
12 evidence, and I will ask they do so now.

13 MR. LaPINTA: The defendant calls Scott Gibbs.

14

15 S C O T T G I B B S,

16 called as a witness, having been first

17 duly sworn, was examined and testified

18 as follows:

19 THE CLERK: State and spell your name for the  
20 record.

21 THE WITNESS: Scott Gibbs, S-C-O-T-T, G-I-B-B-S.

22 THE COURT: Be seated, Mr. Gibbs. You have to  
23 be close to the microphone to keep your voice up.

24 Thank you.

25 MR. LaPINTA: Thank you, your Honor.

**Gibbs-Direct/Lato**

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DIRECT EXAMINATION

BY MR. LATO:

Q Good afternoon, Mr. Gibbs.

A Good afternoon.

Q For whom are you employed?

A We Recover Data.

Q If you can just speak into the microphone, loud, slow and clearly. Okay?

A Yes.

Q What is We Recover Data?

A We Recover Data is a data recovery and digital forensics firm.

Q What is your position at We Recover Data?

A I am the director of digital forensics and E discovery, electronic discovery.

Q What is electronic data?

A Electronic data is information that is stored on the digital media or created by a computer or digital device.

Q What is E discovery?

A E discovery is the process by which electronic information, or ESI, which is electronically stored information, is discovered and made presentable or litigation and for court proceedings.

Q Describe what you do as an employee of We Recover

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1 Data?

2 A I perform digital forensic analysis of digital media  
3 and digital devices.

4 I also run the electronic discovery, which is  
5 the discovery or the presentation of the digital  
6 information which is the result of the analysis for  
7 litigations for the court proceedings.

8 Q What clients in the past have you performed work for?

9 A Umm, we have done work for a number of firms. Some  
10 of our clients are Stroock and Stroock, --

11 Q What is Stroock and Stroock?

12 A Stroock and Stroock is a law firm.

13 Q Besides Stroock and Stroock, who else have you worked  
14 for?

15 A I have worked for Smart Data --

16 Q Regarding your role as an employee of We Recover  
17 Data?

18 A We have also worked for Data For You, which is a  
19 sequel database company.

20 We have also done work for TRI-AD. They are a  
21 digital surveillance distributor.

22 Q What is your education?

23 A I hold the ENCE, which is the digital forensics  
24 certification. I trained with Guidance Software.  
25 Guidance Software is forensic training number one.

**Gibbs-Direct/Lato**

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1 Q Let me stop right there.

2 What is your education in terms of college?

3 A I went to Clarke, Atlanta, University.

4 Q That is in Atlanta, Georgia?

5 A Yes, it is.

6 Q Did you obtain a degree from Clarke?

7 A I did not.

8 Q Did you study computers in Clarke?

9 A Yes. I studied electrical engineering.

10 Q Did you obtain any type of education in the area of  
11 computer forensics?

12 A Yes, I have.

13 Q Explain that education, please.

14 A I trained with Guidance Software, they are the maker  
15 of EnCase forensic, which is a forensic software. They  
16 are the certifier of the ENCE, and training with Mile 2.  
17 They offer forensic training.

18 I also trained -- I took the CCE, which is  
19 the -- it is also a digital forensic certification.

20 Q Is it fair to say that the training you explained has  
21 to do with your analysis of data on computers?

22 A Yes.

23 Q And when we speak of analysis of data on computers,  
24 do we speak of analyzing the source of that data?

25 A Yes.

**Gibbs-Direct/Lato**

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1 Q Do you also analyze where it is contained in terms of  
2 data on the machinery?

3 A Yes.

4 Q Are you also trained in terms of retrieving certain  
5 data on computers?

6 A Yes.

7 Q And obviously retrieval is obtaining it from the  
8 computer so you could view it, see it and know it; is that  
9 right?

10 A Yes.

11 Q Do you have any certification concerning the analysis  
12 of data on computers?

13 A Yes. I obtained the ENCE.

14 Q Is that what you just described?

15 A Yes.

16 Q Okay. Let's move on.

17 Prior to being employed by We Recover Data, what  
18 other jobs have you had in the computer field?

19 A I was the director of digital forensics for Advance  
20 Discovery, an E discovery firm. I was the director of  
21 digital forensics for Smart Data. I was also the director  
22 of digital forensics and IT for LDSI.

23 Q As the director of these various entities, did you  
24 supervise other people?

25 A Yes.



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1 I supervised the IT department and also anyone  
2 working with the collection of digital media.

3 Q How many years have you been involved in the computer  
4 technology field?

5 A I was involved for more than eight years in computer  
6 technology.

7 Q Have you testified in the past as a computer expert  
8 in the field of computer forensics?

9 A Yes.

10 Q Have you been qualified in any courts or tribunals as  
11 an expert of computer forensics in the past?

12 A Yes, I have.

13 MR. LaPINTA: Your Honor, I move to qualify  
14 Mr. Gibbs as an expert in computer forensics.

15 MR. KABRAWALA: May I briefly, Judge?

16 THE COURT: Yes.

17

18 VOIR DIRE EXAMINATION

19 BY MR. KABRAWALA:

20 Q Good afternoon, Mr. Gibbs.

21 A Good afternoon.

22 Q My name is Ameet Kabrawala, I am an Assistant U.S.  
23 Attorney.

24 I have some questions as to your qualifications.

25 You mentioned you were previously qualified.

**Gibbs-Direct/Lato**

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1 A Yes.

2 Q Where were you qualified previously?

3 A In New York. I testified for an arbitration.

4 Q In an arbitration?

5 A Yes.

6 Q Anything else?

7 A No.

8 Q You are certified in EnCase; is that correct?

9 A Yes, the ENCE.

10 Q And you are a certified computer examiner?

11 A Yes.

12 Q And you are also certified in computer hacking  
13 forensics; is that correct?

14 A That is correct, the CHFI.

15 Q And there are ethical guidelines that control all  
16 those various certifications; is that correct?

17 A Yes.

18 Q And you always complied with all of those guidelines;  
19 is that correct?

20 A Yes.

21 MR. KABRAWALA: That's all.

22 THE COURT: Any objection?

23 MR. KABRAWALA: No objection.

24 THE COURT: All right.

25 I will allow Mr. Gibbs to offer his expert

**Gibbs-Direct/Lato**

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1 opinion in the area of computer forensics.

2 The same instruction I gave you with respect to  
3 Detective Forrestal applies. I don't have to repeat the  
4 instructions to you, but it is the same instruction as to  
5 the offering of expert testimony.

6 Go ahead, Mr. LaPinta.

7 MR. LaPINTA: Thank you.

8 BY MR. LaPINTA:

9 Q Mr. Gibbs, did there come a time you were hired on  
10 behalf of Joseph Valerio to perform forensic computer  
11 evaluation of technologies involved in this criminal  
12 proceeding?

13 A Yes.

14 Q When were you hired?

15 A In or about July of this year.

16 Q 2014?

17 A Yes.

18 Q Who hired you?

19 A Umm, I was hired by yourself, Mr. LaPinta, and  
20 Frances.

21 Q Who paid you?

22 A Frances Valerio.

23 Q Who is Frances Valerio?

24 A I think she is the mother of Mr. Valerio.

25 Q Okay.

**Gibbs-Direct/Lato**

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1 Did there come a time that you began an  
2 evaluation of certain items of technology regarding this  
3 investigation?

4 A Yes.

5 Q Did you begin an evaluation of a desktop computer of  
6 the letters -- did there come a time when you evaluated,  
7 investigated, reviewed a computer desktop of the brand  
8 VVTV?

9 A I analyzed a hard drive.

10 Q And so you were not given access to the actual  
11 computer; is that right?

12 A No, I was not.

13 Q You were given access to a copy of the hard drive of  
14 that computer; is that right?

15 A Yes.

16 Q Do you know what size of the hard drive that was?

17 A It was a 2.5 inch, it looked like an internal laptop  
18 hard drive.

19 Q Do you know how many gigabit the hard drive is?

20 A The hard drive was approximately 20 gigabits.

21 Q What is a gigabit?

22 A It is 1,024 megabit.

23 Q How is that relevant when evaluating a computer?

24 A It would determine how much data can be stored on  
25 that particular piece of media.

**Gibbs-Direct/Lato**

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1 Q Did you have an occasion to discover what kind of  
2 operating system was in that computer?

3 A Yes. They had a Windows operating system.

4 Q What is an operating system?

5 A It is software that allows the computer or the mother  
6 board to interface with or to be used by a user.

7 Q It is basically the manner in which a computer  
8 operates; is that right?

9 A Yes.

10 Q What is that program once again?

11 A Windows, Microsoft Windows.

12 Q How old of an operating program was it?

13 A It was fairly old. I would say at least 14 years,  
14 give or take.

15 Q You said 14 years old?

16 A Yes. Give or take, yes.

17 Q And the operating system that you reviewed, would you  
18 say that that is an outdated system?

19 A Yes.

20 Q That it is an antiquated system?

21 A Yes.

22 Q And that in the past 14 years technology regarding  
23 computers has advanced significantly?

24 A Yes.

25 Q You used the forensic software to evaluate this

**Gibbs-Direct/Lato**

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1 computer, right?

2 A Yes.

3 Q And that system that you used is called EnCase?

4 A Yes.

5 Q By the way, are you a certified EnCase technician?

6 A Yes.

7 Q Have you been recertified after being initially  
8 certified?

9 A I am in the process of being recertified now.

10 Q Is it a process you go through every few years?

11 A Yes, there are training requirements.

12 Q Do you pay for that yourself?

13 A Yes, I have.

14 Q And did you have an occasion to search the hard drive  
15 of that tower computer we were speaking of?

16 A Yes.

17 Q Did there come a time when you found videos in the  
18 inbox of that computer?

19 A Yes.

20 Q What is an inbox?

21 A It is a location where email data is stored.

22 Q Is it fair to say that the emails that were in that  
23 inbox were received by email; is that correct?

24 A Yes.

25 Q Were those videos containing contraband or child

**Gibbs-Direct/Lato**

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1 pornography?

2 A Yes.

3 Q Were they found anywhere else on that hard drive  
4 besides that inbox?

5 A No. Not anywhere on the hard drive other than that  
6 location.

7 Q What is the significance of having email videos only  
8 contained in an inbox of a computer?

9 A It would suggest that the data was not saved or  
10 downloaded to the machine -- saved outside of the inbox.

11 Q Does it also indicate that the videos contained in  
12 the inbox were not opened on that computer?

13 A Yes. It would suggest it was not opened.

14 Q When I use the word "opened," would you also adopt  
15 the word "viewed"?

16 A Yes.

17 Q If those videos were opened in that computer, would  
18 they be contained anywhere else on the hard drive besides  
19 the inbox?

20 A Yes.

21 Windows makes a copy of windows or data that are  
22 attachments in a temporary storage location.

23 Q What does the word "artifacts" mean in terms of  
24 computer verification?

25 A It means some kind of evidence or some type of

**Gibbs-Direct/Lato**

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1 digital fingerprint, digital data.

2 Q If videos found in an inbox were viewed or opened on  
3 that computer, would there be artifacts of that video  
4 contained elsewhere on that hard drive?

5 A Yes.

6 Q Did you find any other artifacts of those videos  
7 contained anywhere else in that inbox?

8 A I did not.

9 Q Would you, therefore, conclude from your experience  
10 and evaluation and training as a forensic computer  
11 evaluator that the videos contained in that inbox, the  
12 child pornography videos, were not viewed or opened in  
13 that computer or not?

14 A No. I would say they were not viewed or saved to  
15 that computer.

16 Q Did your investigation turn after you completed the  
17 computer evaluation, did your evaluation then turn to a  
18 Samsung four gigabit SD storage card?

19 A Yes.

20 Q Did you use forensic software that you were trained  
21 with to evaluate that storage card?

22 A Yes.

23 Q Did you find any child pornography/contraband files  
24 on that Samsung storage card?

25 A Yes.



**Gibbs-Direct/Lato**

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1 Q And I will draw your attention to a file that is  
2 entitled cam, C-A-M, underscore, 0005.JPG.

3 Do you recall seeing that file in your  
4 evaluation of this storage card?

5 A Yes.

6 Q I will hereafter refer to that file as the JPG file,  
7 okay?

8 A Yes.

9 Q Did that JPG file contain child pornography?

10 A Yes.

11 Q Were you able to retrieve data or information  
12 regarding that JPG file from the card?

13 A Yes.

14 Q Did that data include a date that that the card had  
15 as when the data -- when the file, the JPG file, was made?

16 A Yes, it had created a date.

17 Q All right.

18 Do you know what that date is?

19 A I do not recall.

20 Q Do you have your report handy?

21 A I have my report.

22 Q Would that refresh your recollection, the report?

23 A No. I don't have the date on that -- for that  
24 particular file, no.

25 Q There were other files aside from the JPG file you

**Gibbs-Direct/Lato**

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1 found on that card?

2 A Yes.

3 Q Were there three MP 4 files as well?

4 A Yes.

5 Q What is an MP 4 file?

6 A It is a video file, a compressed video format.

7 Q And they also contain contraband child pornography;  
8 is that right?

9 A Yes.

10 Q Were there dates and times regarding those particular  
11 files?

12 A Yes.

13 Q Now, regarding the accuracy of those dates and times,  
14 do you have any experience in terms of understanding how  
15 dates and times are made part of a storage card?

16 A Yes.

17 Q Explain how you know that. How do you obtain dates  
18 and times from a storage card?

19 A A device's operating system typically writes  
20 metadata, which is data to the file system on a particular  
21 piece of media, whether a hard drive or SD card.

22 Q Okay.

23 The date and time on these particular files,  
24 could you testify as to the dates and times on that media  
25 as to whether they are accurate dates or times?

**Gibbs-Direct/Lato**

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1 A I cannot, because metadata can be manipulated.

2 Q What do you mean by the word "manipulated"? Changed?

3 A I mean if someone changes the date and time of a  
4 system that is used to create that metadata, then the  
5 dates and times reported to the media could be manipulated  
6 or falsified.

7 Q Is it fair to say whatever date and time was on that  
8 video camcorder, as set there, is what was imbedded on  
9 that storage device; is that correct?

10 A Yes.

11 Q Do you have any way of determining at the time the  
12 video was created that the date and time were the correct  
13 date and time?

14 A I could not.

15 Q Do you have any information from that card that you  
16 evaluated whether the date and time on that camcorder was  
17 changed after those files were recorded?

18 A I could not; without a log I could not.

19 Q Does that card contain a log to show when dates and  
20 times are changed on that camcorder?

21 A No.

22 Q So if I understand you correctly, the evaluation of  
23 the metadata on that card cannot indicate whether the date  
24 and time, at the time of the recording, was actually  
25 accurate; is that right?

**Gibbs-Direct/Lato**

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1 A That is correct.

2 Q Did you come to learn in the course of your  
3 evaluation of that data card whether those images were in  
4 fact deleted from that card?

5 A Yes.

6 Q Were you able to determine that there were remnants  
7 or pieces of that video that were in fact extracted from  
8 that card?

9 A Yes.

10 Q Does the data on that card indicate when those images  
11 were deleted?

12 A It does not.

13 Q Does it contain any information regarding date and/or  
14 time when they were deleted?

15 A It does not.

16 MR. LaPINTA: That's all I have.

17 THE COURT: Cross-examination?

18 MR. KABRAWALA: Yes, your Honor.

19 May I approach the witness?

20 THE COURT: Yes.

21 (Counsel approaches the witness stand.)

22

23

24

25

**Gibbs-Cross/Kabrawala**

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1 CROSS-EXAMINATION

2 BY MR. KABRAWALA:

3 Q I would like to see what you were referring to during  
4 your testimony, please.

5 A Yes.

6 MR. KABRAWALA: Your Honor, can we have a quick  
7 recess, please?

8 THE COURT: Yes.

9 We will take a few minute break.

10 Just go back to the jury room for a few minutes,  
11 please.

12 (Whereupon, at this time the jury leaves the  
13 courtroom.)

14 MR. BODE: Your Honor, can I ask Mr. Gibbs to  
15 be excused?

16 Can I ask his social security number on the  
17 record -- it doesn't have to be on the record, but if he  
18 can provide it to counsel, we need to check some things.

19 THE COURT: All right.

20 You don't have to do it on the record, but  
21 provide that information to defense counsel.

22 MR. BODE: Thank you, your Honor.

23

24 (Whereupon, a recess was taken.)

25

**Gibbs-Cross/Kabrawala**

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1 THE COURT: I understand the government is  
2 asking for a social security number, which Mr. Lato is  
3 providing.

4 MR. BODE: I would like to have his home  
5 address, not for the record, but I would like to compare  
6 if we are talking about the same person or not.

7 THE COURT: All right.

8 Mr. Gibbs, would you just step outside for a  
9 minute, please. Thank you.

10 (The witness steps out.)

11 THE COURT: What is the issue?

12 MR. BODE: Your Honor, it is hard to read on the  
13 Blackberry, but it appears he may have had an arrest as  
14 recently as July of this year. We are trying to figure  
15 out what it is. He clearly didn't report it to the  
16 defense. The picture matches, and it looks like the  
17 social is the same social security number. He didn't  
18 disclose it and I would like to look into it.

19 THE COURT: Do you have any knowledge of any  
20 arrests this year?

21 MR. LATO: No, but I will look into that right  
22 now.

23 THE COURT: Okay.

24 (Whereupon, at this time there was a pause in  
25 the proceedings.)

**Gibbs-Cross/Kabrawala**

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1 MR. LATO: Your Honor, it is the same person.  
2 He did not disclose this to us. I asked him  
3 why.

4 In any event, he thought it was only priors.  
5 I will tell you what he just told me.

6 He was arrested for driving under the influence  
7 of alcohol. It was an intoxicated charge in Manhattan.

8 He said that the case has been lowered to an  
9 impaired, which is a violation. He said the reason he  
10 didn't tell us, because he said it is not a crime. It is  
11 a violation, and it is ongoing. That is where we are.

12 MR. BODE: Obviously, your Honor, alcohol use,  
13 and especially very recently, there is a perception issue.

14 What I would ask your Honor is that he come back  
15 on Wednesday and give us a chance to look at the law in  
16 this area. We didn't get this --

17 THE COURT: You had 20 minutes. To go through  
18 his background is 10 minutes.

19 You can correct me if I'm wrong, Mr. Bode, but  
20 everything he testified to, your expert said the exact  
21 same thing.

22 MR. BODE: He did opine -- the difference is him  
23 opining that this wasn't open, viewed or looked at. That  
24 is what he has indicated as to his opinion testimony.

25 THE COURT: Your expert said he could verify

**Gibbs-Cross/Kabrawala**

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1 that it was opened and viewed on that computer? I don't  
2 remember him saying that.

3 Obviously if you look at this -- if you do  
4 research with regard to this expert, and there is  
5 something you believe admissible, I will have the defense  
6 call him back on Wednesday. But I'm skeptical as to  
7 whether it is necessary.

8 MR. BODE: There are two areas of  
9 cross-examination, one is his perception issues relating  
10 to alcohol abuse. He has a prior drug case and an alcohol  
11 case of this year.

12 And, two -- three, actually.

13 Two is his bias toward law enforcement.

14 Three, the fact that he didn't disclose it and  
15 he is trying to pass this up is quite disturbing.

16 THE COURT: My ruling is that they are not  
17 matters you can go into on cross-examination.

18 We have 15 minutes to get this done.

19 MR. BODE: We will get the cross done. And we  
20 are asking that he be brought back on Wednesday morning so  
21 if necessary we can take it up with him at that time.

22 THE COURT: We will discuss that at 4:30.

23 MR. BODE: Okay.

24 (Whereupon, the jury at this time entered the  
25 courtroom.)



**Gibbs-Cross/Kabrawala**

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1 THE COURT: Will everyone be seated.

2 Mr. Kabrawala, go ahead.

3 MR. KABRAWALA: Thank you, your Honor.

4 Q You work at a company called We Recover Data?

5 A Yes.

6 Q And among other things you are certified as a hacking  
7 forensics investigator?

8 A Yes.

9 Q And that includes detection of malware or spyware?

10 A Yes.

11 Q And malware or spyware with respect to computers?

12 A Yes.

13 Q And we can't see them, but they secretly send data to  
14 others without us knowing; is that fair to say?

15 A Spyware, yes.

16 Q Basically they spy on the user?

17 A Yes.

18 Q And malware essentially is designed to do something  
19 that the user does not intend; is that correct?

20 A Yes.

21 Q And malware can generate or gather information?

22 A Yes.

23 Q Gather information from the user or the computer?

24 A Yes.

25 Q Such as an IP address?

**Gibbs-Cross/Kabrawala**

900

1 A Yes.

2 Q And it can also gain access to private computer data?

3 A Some malware, yes.

4 Q And/or sensitive government computer data, if malware  
5 were on a government computer?

6 A If malware had that ability on a government computer,  
7 yes.

8 Q You were hired by the defense; is that correct?

9 A Yes.

10 Q Hired to examine a hard drive?

11 A Yes, and an SD card.

12 Q And the hard drive was seized from the defendant's  
13 house, to your knowledge?

14 A I don't know how they came into possession of it.

15 Q Did you have get to look at the hard drive itself?

16 A I saw what appeared to be a clone of the drive in  
17 question.

18 Q You were hired to look for the presence of illegal  
19 child pornography?

20 A Yes.

21 Q And determine the dates of or a video on a particular  
22 memory card or SD card?

23 A Yes.

24 Q And you were provided a forensic copy of the hard  
25 drive?

**Gibbs-Cross/Kabrawala**

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1 A What appears to be, yes.

2 Q You also saw child pornography on that hard drive?

3 A In the inbox of the account on the drive.

4 Q You also found child pornography on the hard drive?

5 Yes or no?

6 A In the inbox, yes.

7 Q It is a simple question and let me try it again.

8 Did you find child pornography on the hard  
9 drive?

10 A Yes.

11 Q Did you find approximately 30 videos of child  
12 pornography?

13 A I don't have the exact number of how many.

14 Q More than two dozen?

15 A Umm, I would say -- I couldn't say how many.

16 Q You found the child pornography video on the inbox of  
17 the hard drive?

18 A Yes.

19 Q A Microsoft Outlook Express data file?

20 A Yes.

21 Q And that is an email program, Microsoft Outlook  
22 Express; is that correct?

23 A Yes.

24 Q And the email program was on the hard drive; is that  
25 correct?

**Gibbs-Cross/Kabrawala**

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1 A Yes.

2 Q You found some emails as well, didn't you?

3 A Yes.

4 Q Did you review those emails?

5 A I reviewed -- yes, I reviewed the emails.

6 MR. KABRAWALA: One moment.

7 (Government counsel confer.)

8 Q You examined a Samsung SD memory card; is that fair  
9 to say?

10 A Yes.

11 Q And you found images of a young girl depicted on that  
12 memory card; is that correct?

13 A Yes.

14 Q A number of them?

15 A Yes.

16 Q And you also found data associated with those files  
17 on the memory card; is that correct?

18 A By data, would you clarify?

19 Q Metadata?

20 A Metadata, yes.

21 Q And you also found metadata with respect to the  
22 creation date of those images?

23 A Yes.

24 Q Some of the metadata indicates the date on which the  
25 child pornography images were created?

**Gibbs-Cross/Kabrawala**

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1 A I cannot say if it was exactly the case. It is a  
2 possibility that the metadata can be manipulated.

3 (Government counsel confer.)

4 Q Mr. Gibbs, I will show you what is marked as  
5 Government's Exhibit 509, 510, 515, 516 and 517.

6 (Handed to the witness.)

7 Q Take a look at those images, please.

8 They are redacted copies of images.

9 A Yes.

10 Q The data on the images says that it was created on a  
11 certain date; is that correct? The date associated with  
12 the images?

13 A Yes.

14 Q September 10th, 2010 being one of those dates; is  
15 that correct?

16 A One of the dates on the paper, yes.

17 Q What is the other date?

18 A January 19th, 2011.

19 Q Did you inspect the video camera that gave those  
20 images?

21 A No, I did not.

22 Q Those two dates that you testified to, those are the  
23 dates that appeared as the creation date of the images; is  
24 that correct?

25 A That is the date on the papers, yes.

**Gibbs-Cross/Kabrawala**

904

1 Q And let me show you an exhibit that you created,  
2 Government's Exhibit 102 for Identification.

3 (Handed to the witness.)

4 Q This is a document you created. I highlighted it.

5 According to that exhibit, the images that you  
6 are looking at in front of you, what were the dates of  
7 that creation, their creation?

8 MR. LaPINTA: Objection.

9 THE COURT: Ground?

10 MR. LaPINTA: Foundation.

11 THE COURT: I thought this is something he  
12 created.

13 Q Did you create Government Exhibit 102?

14 A This is -- this appears to be a printout of a file  
15 listing that I generated in the case.

16 Q Okay.

17 According to your own file listing, what was the  
18 dates of the creation of the images in front of you? Just  
19 according to the data you generated?

20 A The images highlighted here are -- have a file  
21 created entry of 9/10/2010 and 1/19, 2011.

22 Q And the same as the exhibits, the photographs in  
23 front of you, is that correct?

24 A Yes.

25 Q Have you ever seen this camera,

**Gibbs-Cross/Kabrawala**

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1 Government's Exhibit 404?

2 A I have not.

3 Q Have you ever held it before?

4 A I have not.

5 Q Ever turned it on?

6 A I have not.

7 Q You never confirmed the date on the camera, correct?

8 A I was not presented with this camera.

9 Q But it was available to you?

10 MR. LATO: Objection.

11 MR. LaPINTA: Objection.

12 THE COURT: Sustained.

13 Q Are you aware that the camera was available to the  
14 defense for the last six months?

15 MR. LATO: Objection.

16 THE COURT: Please move on.

17 Q You never looked at the date on this camera?

18 A I have not.

19 Q You are just saying that it could be possible that  
20 the date could be different; is that fair to say?

21 A Umm, sir, could you rephrase that?

22 Q Sure.

23 You are just saying in your direct testimony  
24 that it could be possible that the date is unreliable?

25 A Yes. It is possible that the date is unreliable.

**Gibbs-Cross/Kabrawala**

906

1 Q But you never turned this camera on to see what the  
2 date is on the camera?

3 A I was never presented --

4 MR. LATO: Objection.

5 THE COURT: You can answer it, sir. What were  
6 you saying?

7 THE WITNESS: I was never presented with that  
8 camera.

9 Q So your testimony that the date could be unreliable  
10 is really just a theory; is that correct?

11 A No. It is a fact that it could be unreliable.

12 Q It is a fact that it could be reliable or unreliable  
13 is a theory?

14 MR. LaPINTA: Objection.

15 THE COURT: Sustained.

16 I think we can move on.

17 Q You are being paid to testify here today; is that  
18 correct?

19 A Yes.

20 Q \$750 an hour?

21 A My company is getting paid \$750 an hour.

22 Q You are an owner of the company, part owner; is that  
23 right?

24 A I'm not part owner.

25 Q You get a percentage, don't you?



**Gibbs-Cross/Kabrawala**

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1 A I get a percentage.

2 Q You are getting paid approximately \$10,000 for this  
3 case; is that correct?

4 A No. It is a little bit less.

5 Q You are getting paid more than that?

6 A I said it is less.

7 Q You are getting paid a little less than \$10,000?

8 A Yes.

9 Q How much are you getting paid?

10 A Approximately \$9,000 for all the analysis that was  
11 performed.

12 Q So \$9,000 for all the analysis, and \$750 an hour for  
13 testimony?

14 A No. \$9,000 includes all the analysis that I have  
15 done, plus the testimony.

16 Q Your company is being paid over \$30,000 in relation  
17 to this case?

18 A Yes.

19 Q The defense paid you to write a report in this case;  
20 is that correct?

21 A The defense paid to have the analysis done. The  
22 report is part of the services.

23 Q I just want to show you what is marked as -- I will  
24 show you what is marked as Government's Exhibit 1,000 for  
25 identification.

**Gibbs-Cross/Kabrawala**

908

1 Is that a copy of your report?

2 (Handed to the witness.)

3 A Yes.

4 Q It is a printed copy of your report; is that correct?

5 A Yes.

6 Q The original was a PDF?

7 A Yes.

8 Q And you provided this report in PDF to the defense;  
9 is that correct?

10 A Yes.

11 Q Knowing that it would go to the government; is that  
12 correct?

13 A Yes.

14 Q And PDF is a standard kind of digital file that  
15 people commonly use to send and receive electronic  
16 documents?

17 A Yes.

18 Q PDF, like other digital formats, store data?

19 A Yes.

20 Q And PDFs could contain spyware or malware; is that  
21 correct?

22 MR. LaPINTA: Objection to the relevance of his  
23 opinion that was solicited on direct examination.

24 THE COURT: We can have a sidebar.

25

**Gibbs-Cross/Kabrawala**

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1 (Whereupon, at this time the following took  
2 place at the sidebar.)

3 THE COURT: What is the relevance?

4 MR. KABRAWALA: Your Honor, the witness  
5 implanted spyware in the PDF himself to send him  
6 notifications every time the report was opened, who opened  
7 it, what their IP address is. This was all sent to a  
8 government computer.

9 MR. LaPINTA: No, it is my computer, and I sent  
10 it to you.

11 MR. KABRAWALA: Knowing it was coming to the  
12 government.

13 MR. BODE: He sent spyware.

14 MR. KABRAWALA: He said he is conducting it in  
15 an ethical manner --

16 MR. LATO: If I understand correctly, the  
17 relevance under 401 is to show that he is attempting to  
18 show a corrupt file or plant a virus on the government's  
19 computer?

20 MR. KABRAWALA: No, get information, unaccessed  
21 information on the government's computer.

22 MR. LATO: He is attempting to spy on the  
23 government?

24 MR. KABRAWALA: Yes.

25 MR. LATO: Under 403, I believe this is out.

**Gibbs-Cross/Kabrawala**

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1 THE COURT: You have two minutes to cover what  
2 else you have to cover.

3 I'm precluding cross-examination on this.

4 MR. KABRAWALA: Precluding on this?

5 THE COURT: Yes.

6

7 (Whereupon, at this time the following takes  
8 place in open court.)

9 BY MR. KABRAWALA:

10 Q I will show you on the screen in front of you what is  
11 admitted as Government's Exhibit 559-A, as in Apple, in  
12 evidence.

13 Let me show you 303 first -- 303-A.

14 (Handed to the witness.)

15 Q Do you see that document in front of you? It is a  
16 two-page PDF.

17 Do you see it?

18 A Yes.

19 Q I will just read a portion of it.

20 (At this time a document was exhibited on  
21 courtroom screen.)

22 Q I will start reading it, you tell me if I get it  
23 wrong, starting from the videos.

24 Do you see that?

25 A I see it.

**Gibbs-Cross/Kabrawala**

911

1 Q The videos you sent by cell phone camera are perfect  
2 and there is no need for the expense of another camera  
3 when you have done a terrific job with the cell phone  
4 camera. I have a new cell phone which allows me to  
5 transfer your video to my email and the screen is bigger  
6 to view. Plus you can have endless video time per session  
7 with a cell phone camera. As far as the script, etcetera,  
8 etcetera.

9 MR. LATO: Judge, what is the question?

10 MR. KABRAWALA: Just a moment.

11 (Government counsel confer.)

12 Q The portion that I read, would that change your  
13 opinion as to whether or not the videos were actually  
14 viewed?

15 MR. LATO: Objection.

16 THE COURT: Sustained as to form.

17 (Government counsel confer.)

18 Q Now I'm showing you 559 Alpha.

19 MR. LaPINTA: Same objection, your Honor.

20 THE COURT: Objection sustained.

21 Q I'm showing you what is entered in evidence as  
22 Government's Exhibit 559-A, as in Alpha.

23 Did you review this email?

24 (At this time a document was exhibited on  
25 courtroom screen.)

**Gibbs-Cross/Kabrawala**

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1 A I did not read the email, no.

2 Q Did you see this email in the defendant's computer?

3 MR. LaPINTA: Objection. Beyond the scope of  
4 direct.

5 THE COURT: Sustained.

6 This whole area I will sustain objection to.

7 Do you have any questions regarding his forensic  
8 analysis, I will allow it. Not as to the content of the  
9 emails or what they say.

10 Q You didn't review the content of any of the emails  
11 found on the defendant's computer; is that correct?

12 A I did not read the emails.

13 Q But you did find child pornography emails on --

14 MR. LaPINTA: Objection, your Honor.

15 THE COURT: Sustained. Asked and answered.

16 MR. KABRAWALA: Nothing further.

17 THE COURT: Any redirect?

18 MR. LaPINTA: No, sir.

19 THE COURT: You may step down.

20 (Whereupon, the witness leaves the witness  
21 stand.)

22 THE COURT: I will speak to the lawyers for a  
23 minute.

24

25

1 (Whereupon, at this time the following took  
2 place at the sidebar.)

3 THE COURT: You have one short witness?

4 MR. LATO: Yes.

5 MR. LaPINTA: One short direct of the witness.

6 THE COURT: Can that witness be here Wednesday  
7 morning?

8 MR. LATO: Yes.

9 THE COURT: I will tell the jury there will be  
10 some additional presentation of the evidence and then we  
11 will proceed to summations.

12 MR. LaPINTA: Yes.

13 MR. LATO: Yes, your Honor.

14 THE COURT: All right.

15

16 (Whereupon, at this time the following takes  
17 place in open court.)

18 THE COURT: Ladies and gentlemen, the defense  
19 has advised me they have some additional evidence to  
20 present on Wednesday morning. I don't think it will take  
21 longer than a small portion of the morning.

22 We will then proceed at that point to the  
23 summations, and then depending on how long that takes, you  
24 will get next my instructions on the law. And I don't  
25 know how long that takes.

1           You may or may not start your deliberations on  
2       Wednesday.

3           Sometimes jurors ask if the schedule changes  
4       during deliberation, and the schedule is exactly the same,  
5       9:30 to 4:30. So that is the schedule we will be  
6       following once you start your deliberations. And we will  
7       see where we stand.

8           I need to speak to the lawyers about my  
9       instructions on the law on Wednesday morning. So why  
10      don't you get here at 9:45 so you are not just sitting  
11      back there. And we will continue at that point.

12           We will not sit tomorrow. I will see you 9:45  
13      Wednesday morning.

14           Do not discuss the case.

15           (Whereupon, at this time the jury leaves the  
16      courtroom.)

17           THE COURT: With respect to this witness, I will  
18      not order the defense to have him here Wednesday morning.  
19      If the government comes up with anything between now and  
20      Wednesday morning, you can submit a letter to me. And the  
21      defense should obviously watch the ECF over the next day  
22      or so, and I will give you a chance to respond to anything  
23      submitted. But it is not at this point necessary to have  
24      him available Wednesday morning. My ruling is that this  
25      is not sufficiently probative of his credibility to



1 warrant cross-examination under 403.

2 First of all, I don't think it goes to  
3 credibility. Unless government details anything with  
4 regard to the conviction -- the current one is not even a  
5 conviction; it is simply a pending charge.

6 So unless the government finds something that  
7 goes directly to credibility, my ruling will be the same.

8 I will also again note that his testimony, I  
9 don't think -- if I compare it in my head to what he said  
10 to what Mr. LaPinta crossed Detective Forrestal on, I  
11 don't see any material difference between what they said.

12 So my ruling is under 403, that the  
13 cross-examination that the government is proposing is  
14 substantially outweighed by the danger of unfair prejudice  
15 with respect to the collateral issue of this witness'  
16 background.

17 The issue of the spyware, again, under 403,  
18 whatever it could be with respect to that, I believe it is  
19 substantially outweighed by the danger of unfair prejudice  
20 getting into whatever spyware existed in the PDF, as to  
21 whether it was intentional or not, in the way of trying to  
22 obtain information from the government through that  
23 method. And in light of the witness' testimony under 403,  
24 it is not warranted.

25 MR. BODE: If I may, your Honor, and I'm not

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1 arguing with the Court, but I want the record to be clear,  
2 and I know defense counsel wouldn't do this.

3 The program the witness inserted in the PDF is  
4 called We Notify. So he actually gets email notifications  
5 when the government opens the file. If we forward it to  
6 someone else, he knows who we forward it to. It violates  
7 the ethics of the organization he says he is certified by.  
8 I am just wanting to put it on the record, because that  
9 behavior --

10 THE COURT: I don't want you to think by my  
11 ruling I'm not troubled by the fact -- it is obviously  
12 troubling that he coded the PDF. I am troubled by it.  
13 But I have to weigh it against Mr. Valerio on trial here.

14 MR. BODE: We accept your ruling, I just wanted  
15 it on the record.

16 THE COURT: Who is your next witness?

17 MR. LATO: Frances Valerio.

18 THE COURT: Any issue here?

19 MR. BODE: I asked for an offer of proof from  
20 the defense. We requested reciprocal discovery or witness  
21 statement with respect to her.

22 And going back to the time of the bail hearing,  
23 Mr. LaPinta said at that time he had -- she had mental  
24 difficulties, his words, not mine.

25 I want an affirmation from the defense that they

1 believe she is swearable, or some offer of proof, and no  
2 notes or anything whatsoever.

3 THE COURT: What is the subject matter of  
4 testimony?

5 MR. LATO: She will overcome those difficulties  
6 and testify that Olena Kalichenko was in the house, and  
7 that -- we will try to show the jury the possibility that  
8 it was Olena Kalichenko who took the pictures of [REDACTED]  
9 That she was actually there and saw her.

10 THE COURT: Okay.

11 Obviously the government is going to cross her  
12 on whatever mental difficulties she may or may not have.

13 MR. LaPINTA: Sure.

14 MR. LATO: Yes.

15 Consistent with your Honor's ruling, we expect  
16 the government may elicit or in fact we may elicit that  
17 she posted bail for her son.

18 THE COURT: Any other issues in light of the  
19 offer of proof that you anticipate?

20 MR. BODE: No.

21 We don't have an objection to her testimony.

22 THE COURT: Not just an objection, but I'm  
23 trying to minimize sidebars. Any areas with regard to  
24 impeachment or bias?

25 MR. BODE: If that is the limit of her

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1 testimony, no problem. But if she goes further than that,  
2 the doors may be opened.

3 Also, Mr. LaPinta and I were speaking at the  
4 lunch break with regard to the defendant's testimony. And  
5 I wanted to have it on the record.

6 THE COURT: It is my practice for the defendant  
7 to allocute with respect to his decision. And you can do  
8 that now or Wednesday morning.

9 MR. LATO: We will best do it Wednesday morning.  
10 And in light of today's testimony, we would like to  
11 address it one more time in light of your Honor's inquiry.

12 THE COURT: All right. That will be addressed  
13 Wednesday morning.

14 In terms of when everybody gets here, I think  
15 9:15 should be sufficient to have the charge conference by  
16 9:45.

17 MR. LaPINTA: Yes, sir.

18 MR. BODE: Will we have a proposed charge in  
19 advance of that, your Honor?

20 THE COURT: Yes. We will probably post it  
21 tonight. If not tonight, then tomorrow morning.

22 MR. BODE: Fine.

23 THE COURT: I didn't see a verdict sheet, I can  
24 make it up, but I would prefer you draft one.

25 MR. BODE: We will draft one.

1 THE COURT: And block out trial 14, in order to  
2 avoid the substantial prejudice, you should return what is  
3 blocked out as one through 15, your Honor.

4 MR. BODE: That is simple. We can give a Word  
5 version. And we will take care of that.

6 THE COURT: Also eliminate any references of the  
7 forfeiture statutes that are often in there on the front  
8 page.

9 MR. BODE: You want that out of both places, out  
10 of the end and out of the caption on the caption page?

11 THE COURT: Right.

12 MR. BODE: We will do that, your Honor.

13 I know the Court is already thinking about it,  
14 obviously, but then we won't obviously since the jury  
15 doesn't know, but knock on wood, the verdict comes back,  
16 we will keep the jury, or release them. And I think the  
17 parties agreed that the evidence with respect to  
18 forfeiture would be in and it is a matter of doing  
19 forfeiture summation.

20 THE COURT: If there is a conviction, you want  
21 it before the jury or whatever?

22 MR. LATO: We agreed there will be no additional  
23 evidence, and we would want it before the jury.

24 THE COURT: All right.

25 Are there instructions on it?

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1 MR. BODE: I believe they were filed already by  
2 Mr. Kabrawala.

3 MR. KABRAWALA: Yes. I had sent them to  
4 chambers.

5 THE COURT: On ECF?

6 MR. KABRAWALA: On ECF and a Word version with  
7 chambers.

8 MR. LaPINTA: Do you know when they were sent?

9 MR. KABRAWALA: I copied you on the email.  
10 (Counsel confer.)

11 THE COURT: Anything else that we need to  
12 discuss today?

13 The proposed charge will be posted probably in  
14 an hour or so. It is pretty much similar to the  
15 government's charge, which I checked against Sand. There  
16 are some differences there between Judge Sand, and you  
17 will see it, how I did it. Have a good night.

18 MR. BODE: Thank you.

19 THE COURT: See you Wednesday at 9:15.

20 I will place the ruling on Wednesday -- in terms  
21 of the Rule 29 motion, I want to go back to the emails  
22 with regard to the attempt. And I need to go back and  
23 look at them.

24 (Case on trial adjourned until 9:15 clock,  
25 Wednesday, November 12, 2014.

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I-N-D-E-XW-I-T-N-E-S-S-E-S

R O R Y F O R R E S T A L 737

DIRECT EXAMINATION 737

BY MR. KABRAWALA

CROSS-EXAMINATION 790

BY MR. LAPINTA

REDIRECT EXAMINATION 856

BY MR. KABRAWALA

S C O T T G I B B S 878

DIRECT EXAMINATION 879

BY MR. LATO

VOIR DIRE EXAMINATION 883

BY MR. KABRAWALA

CROSS-EXAMINATION 895

BY MR. KABRAWALA

**E-X-H-I-B-I-T-S**

Government Exhibit 270-A was received in evidence	738
Government Exhibit 270-B was received in evidence	739
Government Exhibit 559-A was received in evidence	740
Government Exhibits 503-A through 503-F were received in evidence	747
Government Exhibits 504-A through 504-D were received in evidence	749
Government Exhibit 551 was received in evidence	751
Government Exhibit 552 was received in evidence	753
Government Exhibit 552-A was received in evidence	754
Government Exhibit 553 was received in evidence	755
Government Exhibits 554, 554-B and 554-C were received in evidence	757
Government Exhibit 567 was received in evidence	758
Government Exhibit 567-A was received in evidence	758
Government Exhibit 568 was received in evidence	760
Government Exhibit 550-A was received in evidence	763
Government Exhibit 564 was received in evidence	763
Government Exhibits 505 and 507 through 539 were received in evidence	768



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, : 14 CR 0094  
v. : U.S. Courthouse  
JOSEPH VALERIO, : Central Islip, N.Y.  
 :  
 : TRANSCRIPT OF TRIAL  
Defendant. :  
 : November 12, 2014  
-----X 9:30 a.m.

BEFORE:

HONORABLE JOSEPH F. BIANCO, U.S.D.J.  
and a jury

APPEARANCES:

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Proceedings recorded by mechanical stenography.  
Transcript produced by computer-assisted transcription.

OWEN WICKER, RPR  
OFFICIAL COURT REPORTER

## Proceedings

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MORNING SESSION

(Case called.)

(Appearances noted.)

THE COURT: Good morning. Mr. Valerio is present as well.

Before we move to the charge conference, I wanted to deal with two outstanding matters from last week.

First, with respect to the Rule 29 motion, I did reserve because I wanted to go back and look at the e-mails which is part of the motion Mr. Lato made.

I'm denying the Rule 29 motions on the record, and I'll do that later because we're running a little bit behind on the schedule, but I wanted to note that on the record.

I should say, and I'll explain later, I'm denying the motion. But there is a potential multiplicity problem that I think is appropriately addressed if there is a conviction on both the substantive sexual exploitation count, Count 2, and all the attempts.

Because the way Mr. Lato noted, the way the Government charged it, it could be sexual exploitation charges covering a several-month period of time.

If the jury were to convict on that and all the attempts, and the Court were to sentence the defendant on

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## Proceedings

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THE COURT: Mr. Valerio, it is the practice of the Court to address the defendant directly on this issue to make sure the defendant understands what his right is, so I'll reiterate what I think your lawyer has already explained to you.

You have a constitutional right to testify in your own defense if you wish to. Although obviously your lawyers may provide you with advice regarding that decision, the decision is ultimately yours. It is not your lawyers' decision whether or not to exercise that constitutional right; it is yours.

Your lawyers indicated that they have discussed this issue thoroughly with you and it is your decision not to testify; is that correct?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right.

Why don't I do this. Since it is 10 o'clock already -- I don't want the jury sitting back there.

Do you think the charge conference will take ten or 15 minutes?

MR. LATO: 15 minutes is sufficient.

THE COURT: So we did post the proposed jury instructions on Monday night. I assume both sides received them.

MR. BODE: Yes, your Honor, we have.

OWEN WICKER, RPR

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## Proceedings

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both, it would potentially be punishment for the same offense, which is not permissible. But the case law suggests that would be.

They could find the defendant not guilty of the sexual exploitation count with respect to number one but guilty of the attempts. So there is a reason for it to have been charged that way.

I think it is appropriately charged, but it does create a double -- multiplicity problem if there were a conviction on the counts.

I wanted to allocute the defendant regarding his right to testify.

Are you prepared to have that done?

MR. LATO: Yes, your Honor. I told him this morning that your Honor would be inquiring, unlike the other witnesses, that your Honor inquires from the defendant whether he wishes to testify, and it is his right. And we've discussed this a few minutes ago.

THE COURT: You've discussed this issue thoroughly with him?

MR. LATO: Yes, and we've each advised him he has the right to testify. It is our advice he should not testify on his own behalf. He agrees with that.

And we told him your Honor would personally question him on the record.

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MR. LATO: Yes, your Honor.

THE COURT: Before I hear any objections or requests, there are two things that I wanted to note myself.

I did leave out an instruction which I think should be in there. It was one that the Government proposed dealing with request number seven. That deals with the acts and declarations of coconspirators, a Judge Sand instruction, that advises the jurors how they can consider coconspirators' acts and statements.

So I think it is an accurate carriage, it's appropriate, and unless the defense has an objection, I was going to include that in the conspiracy instruction.

Any objection to that?

MR. LATO: I'm just trying to think if there were any coconspirator's statement we actually introduced.

No objection.

THE COURT: That's what I was thinking too.

Technically, Ms. Kalichenko's statements and the e-mails would be coconspirator's statements or always admissible with respect to the defendant's e-mails.

But there is no objection to the instruction?

MR. LATO: No, your Honor.

THE COURT: So I will add that.

The second thing is, as you can see, there is no

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1 venue instruction. Again, I wanted to confirm with  
 2 defense counsel and Mr. Valerio they are not seeking for  
 3 the Court to have the jury make a finding with respect to  
 4 venue.  
 5 If you haven't discussed this with Mr. Valerio,  
 6 please take a minute to explain that to him.  
 7 MR. LATO: Yes, thank you.  
 8 (Counsel confers with defendant.)  
 9 MR. LATO: Your Honor, I've explained it to  
 10 Mr. Valerio, and it has nothing to do with guilt or  
 11 innocence, the location. And there really is no issue in  
 12 this case that there were e-mails in the inbox in his  
 13 computer in his house. And also there is no question,  
 14 based on the summations we'll deliver, that pictures were  
 15 taken of [REDACTED] on Long Island.  
 16 THE COURT: So he's waiving any finding by the  
 17 jury on venue?  
 18 MR. LATO: Yes, your Honor.  
 19 THE COURT: Mr. Valerio, again, Mr. Lato has  
 20 explained to you you have the right to have the jury make  
 21 a finding as to whether or not there is venue for each of  
 22 these counts in this district, that the crimes took place  
 23 at least in part for each count in this district.  
 24 And your lawyer has indicated that you are  
 25 waiving that finding, that you are not challenging the  
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1 issue of venue with respect to the counts in the  
 2 superseding indictment; is that correct?  
 3 THE DEFENDANT: Yes, your Honor.  
 4 THE COURT: All right.  
 5 So let's move to the instruction.  
 6 First, let's do it by part.  
 7 Part one, a series of standard instructions from  
 8 pages 1 through 31.  
 9 Any objections or issues from the Government?  
 10 MR. BODE: No, your Honor.  
 11 THE COURT: Defense?  
 12 MR. LATO: No, your Honor.  
 13 THE COURT: Moving to part two, the elements of  
 14 the charges, pages 32 to 76.  
 15 Any objections or issues from the Government?  
 16 MR. BODE: No, your Honor.  
 17 MR. LATO: No, your Honor.  
 18 THE COURT: Part three, rules regarding  
 19 deliberations, pages 707 through 82.  
 20 Any issues or objections from the Government?  
 21 MR. BODE: No, your Honor.  
 22 MR. LATO: No, your Honor.  
 23 THE COURT: Maybe I shouldn't have given them  
 24 15 minutes.  
 25 The verdict sheet I don't think the Government  
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1 put on ECF.  
 2 Did you post it?  
 3 MR. BODE: Well, your Honor --  
 4 THE COURT: Did the Government give a verdict  
 5 sheet to the defense?  
 6 MR. BODE: And we also gave the indictment.  
 7 THE COURT: I'll let you review those. Let me  
 8 know when you are ready.  
 9 MR. LATO: Two minutes, please.  
 10 THE COURT: Sure.  
 11 MR. LATO: No objection, your Honor.  
 12 THE COURT: There is no objection to the verdict  
 13 sheet?  
 14 MR. LATO: Yes, your Honor.  
 15 THE COURT: Okay. So that's the verdict sheet  
 16 I'll use.  
 17 Then with respect to the forfeiture on the  
 18 instructions, any issues or objections by the Government?  
 19 MR. BODE: No, your Honor.  
 20 MR. LATO: No, your Honor.  
 21 And I just -- for Mr. Valerio's benefit, the  
 22 jury will not even see a special verdict form or consider  
 23 forfeiture unless and until they convict him of other  
 24 counts in the indictment.  
 25 THE COURT: Correct. And any issues with  
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1 respect to the Government with respect to the special  
 2 verdict form or forfeiture?  
 3 MR. BODE: No, your Honor.  
 4 THE COURT: Defense?  
 5 MR. LATO: No, your Honor.  
 6 THE COURT: There is no reference. They will  
 7 not receive the forfeiture instructions or the verdict  
 8 form. They will not be told it is an issue until they  
 9 have reached a verdict with respect to the counts of the  
 10 indictment, to see whether or not that becomes applicable  
 11 with respect to the conviction.  
 12 Then the Government has provided another  
 13 redacted superseding indictment. Just so I know -- I'll  
 14 not compare it, but basically you took out the count.  
 15 MR. BODE: Took out 14 and renumbered 15 to the  
 16 end, and took out the forfeiture language from the end of  
 17 the indictment and the caption.  
 18 THE COURT: Any objection to the redacted  
 19 superseding indictment?  
 20 MR. LATO: No, your Honor.  
 21 THE COURT: To be clear in terms of what my  
 22 practice is, the jury will go back simply with the verdict  
 23 form and the superseding indictment. Nothing else.  
 24 I do tell them if they want a copy of my  
 25 instructions they can request it by note, so they are not  
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1 frantically trying to scribble down on their notepad  
 2 everything I say. So obviously they can request it.  
 3 And any exhibits they request, assuming they  
 4 could be sent back, will be sent back; otherwise, we'll  
 5 bring them back to the courtroom to have them review the  
 6 exhibit.  
 7 MR. BODE: Does your Honor give them the exhibit  
 8 list so they can request specific exhibits?  
 9 THE COURT: It's not my practice to give them a  
 10 specific list. If both sides wanted that and have them  
 11 described, we can do that, but it's not my practice.  
 12 MR. BODE: We made a list of all the admitted  
 13 items, took out the exhibits marked for identification,  
 14 and gave it to the defense.  
 15 THE COURT: It's not my practice to give them  
 16 one, but I usually don't send it back in the first  
 17 instance.  
 18 MR. LATO: We'll discuss it with Mr. Valerio at  
 19 the lunch break. There is no point doing it now, your  
 20 Honor.  
 21 THE COURT: So are there any other issues with  
 22 respect to the charge, the verdict sheet, or anything else  
 23 before we deal with the defense case?  
 24 MR. BODE: No.  
 25 I understand the defendant's witness is the  
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1 defendant's mother; relatively short. We just need ten  
 2 minutes after that with respect to the closings.  
 3 THE COURT: Yes. And the Government doesn't  
 4 have any rebuttal evidence?  
 5 MR. BODE: Until we hear from Mrs. Valerio. But  
 6 until we do, your Honor, I don't think we do.  
 7 THE COURT: Anything else?  
 8 MR. LATO: No, your Honor.  
 9 THE COURT: It's ten after ten, so I guess we  
 10 have ten minutes. I'll have my deputy check the jury to  
 11 see if they are back there.  
 12 (Short recess taken.)  
 13 THE COURT: The jurors are all here, so we'll  
 14 bring in the jury.  
 15 (Whereupon, the jury at this time enters the  
 16 courtroom.)  
 17 THE COURT: If you will all be seated.  
 18 Good morning, members of the jury. Good to see  
 19 you this morning.  
 20 I hope you had a good Veterans Day.  
 21 As you recall, on Monday we were in the defense  
 22 case, the defense was presenting evidence, and we'll  
 23 continue from that point on.  
 24 The defense will call their next witness.  
 25 MR. LATO: The defense will call Frances  
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## F. Valerio - Direct/Lato

934

1 Valerio.  
 2 May I just get her from the hallway?  
 3 THE COURT: Yes.  
 4 THE CLERK: Please raise your right hand.  
 5 **FRANCES VALERIO,**  
 6 called as a witness, having been first  
 7 duly sworn, was examined and testified  
 8 as follows:  
 9 THE WITNESS: Frances Valerio, F-R-A-N-C-E-S,  
 10 V-A-L-E-R-I-O.  
 11 THE COURT: Okay, Ms. Valerio, you may be  
 12 seated.  
 13 THE WITNESS: Right here?  
 14 THE COURT: Yes.  
 15 THE WITNESS: Thank you.  
 16 THE COURT: If you can just pull your chair all  
 17 the way up and pull the microphone very close to your  
 18 mouth so it picks up your voice.  
 19 THE WITNESS: I can turn it?  
 20 THE COURT: Yes. Just keep your voice up.  
 21 THE WITNESS: All right.  
 22 DIRECT EXAMINATION  
 23 BY MR. LATO:  
 24 **Q** What is your relationship to Joseph Valerio?  
 25 **A** I'm his mother.  
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## F. Valerio - Direct/Lato

935

1 **Q** Do you have any other children?  
 2 **A** Yes, I do.  
 3 **Q** Do you have a daughter by the name of Bernadette?  
 4 **A** Yes, I do.  
 5 **Q** Do you have a granddaughter?  
 6 **A** Yes, I do.  
 7 **Q** What is your granddaughter's name?  
 8 **A** [REDACTED]  
 9 **Q** Have you ever been to your son Joseph's house?  
 10 **A** Yes, I have.  
 11 **Q** Where is his house located?  
 12 **A** 3 High Gate Drive in Smithtown.  
 13 **Q** Based upon your personal knowledge, how long has your  
 14 son lived at that house?  
 15 **A** I believe it was 2002, 2003.  
 16 **Q** Have you ever been to the basement of that house?  
 17 **A** Yes, I have.  
 18 **Q** Did you ever see any toys in that basement?  
 19 **A** Yes, I have.  
 20 **Q** What kind of toys have you seen in the basement?  
 21 **A** I've seen toy items, balls. There was a large  
 22 Spiderman ball, Pokemon cards, building toys.  
 23 **Q** Did you ever see any children playing with those  
 24 toys?  
 25 **A** Yes, I have.  
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F. Valerio - Direct/Lato

936

- 1 Q Which children have you seen playing with those boys?
- 2 A There was a little boy by the name of L [REDACTED] that was
- 3 living there. L [REDACTED]'s mom and Joseph, they were a family
- 4 together. Angelique is L [REDACTED]'s mom. Joseph and Angelique
- 5 were involved together, and they were living together.
- 6 Q When was this?
- 7 A I believe it had to have been -- because they had a
- 8 child together in 2009, so it was around perhaps 2005,
- 9 2006 and on.
- 10 Q Have you ever met a person by the name of Olena
- 11 Kalichenko?
- 12 A Yes, I have.
- 13 Q Have you ever seen Olena Kalichenko in your son's
- 14 house?
- 15 A Yes, I have.
- 16 Q About how many times?
- 17 A I would say about three times.
- 18 Q Do you remember which year other years this was?
- 19 A The year that comes to my mind is 2011.
- 20 Q Have you ever seen Olena Kalichenko in the basement
- 21 of your son's house?
- 22 A Yes. Once.
- 23 Q Could you please tell the jury what you remember
- 24 going on in the basement that one time?
- 25 A Okay. We were all in my son's basement --

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F. Valerio - Direct/Lato

937

- 1 Q Who are "we"?
- 2 A My daughter Bernadette, myself, my son, Helena. My
- 3 grandson, Mario, was upstairs watching TV, and Joseph was
- 4 taking a video of [REDACTED] with the costume on. I believe
- 5 it was some sort of a fairy costume, with wings or
- 6 something, I remember. So we were taking these pictures.
- 7 They were being taken.
- 8 Then at a certain point we had either --
- 9 Q Mrs. Valerio --
- 10 A I'm sorry.
- 11 Q I know you are trying to be helpful to Mr. Wicker.
- 12 Please address the jury.
- 13 So please continue with what happened.
- 14 A We were all downstairs, and these videos were being
- 15 taken of my granddaughter.
- 16 Then I believe it was some sort of food arrived,
- 17 and we went upstairs to eat.
- 18 Q Stop right there.
- 19 A I'm sorry. I don't know when to stop. I've never
- 20 done this before.
- 21 Q How many persons would have been in the basement left
- 22 to go upstairs?
- 23 A Joe went upstairs, Bernadette went upstairs, and I
- 24 went upstairs.
- 25 Q Who stayed downstairs in the basement?

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F. Valerio - Direct/Lato

938

- 1 A Helena stayed downstairs with [REDACTED]
- 2 Q When you went upstairs with the others, where did you
- 3 go?
- 4 A We went up to the kitchen to eat whatever arrived. I
- 5 don't remember exactly when it was.
- 6 Q At some point did [REDACTED] and Helena join you in the
- 7 kitchen?
- 8 A Yes, they came upstairs.
- 9 Q About how much after you left the basement did [REDACTED]
- 10 and Helena join you in the kitchen, approximately?
- 11 A Could have been 15, 20 minutes, something like that.
- 12 I can't remember the exact time.
- 13 Q Were you working in September of 2010?
- 14 A Yes, I was.
- 15 Q Who was your employer at that time?
- 16 A Massapequa School District.
- 17 Q What did you do for the Massapequa School District?
- 18 A I worked in the kitchen, in the cafeteria.
- 19 Q Were you working on September 10th of 2010?
- 20 A I couldn't have been working because it was the
- 21 Jewish holidays.
- 22 Q Are you a widow?
- 23 A Yes, I am.
- 24 Q When did your husband pass away?
- 25 A October 24, 2010.

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F. Valerio - Cross/Kabrawala

939

- 1 Q Did he die suddenly or after an illness?
- 2 A No, I took care of him for a year and a half in a
- 3 hospital bed at home.
- 4 Q On days that the children were off from school, the
- 5 grandchildren, did they spend a lot of time with him?
- 6 A Yes. He knew he was dying and wanted to see his
- 7 grandchildren, whether they had school or not.
- 8 Q About how much time on nonschool days did they spend
- 9 with him?
- 10 A I would have to pick them up before the aids would
- 11 leave at 12 noon. They would stay over. And Angelo --
- 12 they called him Michael Imperiale -- my son-in-law, would
- 13 come home at night and then take everybody home after
- 14 work.
- 15 Q So about how many hours would the grandchildren be
- 16 there?
- 17 A Eight, nine hours, depending.
- 18 Q So that grandchild includes [REDACTED]?
- 19 A Yes.
- 20 MR. LATO: One moment, please.
- 21 No further questions.
- 22 THE COURT: Any cross-examination?
- 23 MR. KABRAWALA: Yes, your Honor.
- 24 CROSS-EXAMINATION
- 25 BY MR. KABRAWALA:

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F. Valerio - Cross/Kabrawala

940

- 1 **Q** Good morning. My name is Ameet Kabrawala. I'm the  
 2 federal prosecutor in this case.  
 3 I'll be asking you some questions. If there is  
 4 something you don't understand or if my question is not  
 5 clear, let me know and I'll try to rephrase it.  
 6 **A Thanks.**  
 7 **Q** Joseph Valerio is your son?  
 8 **A Yes.**  
 9 **Q** You support your son?  
 10 **A Yes, I do.**  
 11 **Q** You love your son?  
 12 **A Yes, I do.**  
 13 **Q** He is your own flesh and blood?  
 14 **A He sure is.**  
 15 **Q** And you've been at his court appearances?  
 16 **A Not really. I know I've been waiting outside.**  
 17 **Q** You signed the bail bonds for him?  
 18 **A Yes.**  
 19 **Q** You are paying most of his legal fees?  
 20 **A That's incorrect.**  
 21 **May I expand on that? May I explain the**  
 22 **situation?**  
 23 **Q** No, that's okay.  
 24 You've met Olena Kalichenko?  
 25 **A Yes.**

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F. Valerio - Cross/Kabrawala

941

- 1 **Q** Your son introduced you two, right?  
 2 **A Yes.**  
 3 **Q** He had met her online?  
 4 **A I believe he did.**  
 5 **Q** Did you ever discuss with your son that [REDACTED]  
 6 modeled for him?  
 7 **A Yes, because I was present.**  
 8 **Q** And you were aware that [REDACTED] was modeling for your  
 9 son?  
 10 **A I saw her in a children's magazine once.**  
 11 **Q** [REDACTED] appeared in a children's magazine once?  
 12 **A Yes.**  
 13 **Q** Dressed in a costume?  
 14 **A Yes.**  
 15 **Q** You testified that you saw Olena Kalichenko at your  
 16 son's house?  
 17 **A Yes.**  
 18 **Q** That was in the summer of 2011?  
 19 **A I don't remember exactly. I don't want to lie to**  
 20 **you. I don't remember the exact time, but I do remember**  
 21 **2011.**  
 22 **Q** When she was there, was she carrying a tool belt?  
 23 **A A tool belt?**  
 24 **Q** Yes.  
 25 **A I don't know what a tool belt is.**

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F. Valerio - Cross/Kabrawala

942

- 1 **Q** A belt that carries tools?  
 2 **A I don't remember anything about tools.**  
 3 **Q** Does she have a power saw?  
 4 **A A power saw?**  
 5 **Q** A power saw.  
 6 **A No.**  
 7 **Q** A power drill of any kind?  
 8 **A No.**  
 9 **Q** A nail gun?  
 10 **A No.**  
 11 **Q** And did you hear any construction noises coming from  
 12 the basement while she was there?  
 13 **A No.**  
 14 **Q** By the way, you've never read any e-mails between  
 15 your son and Kalichenko, have you?  
 16 **A No.**  
 17 **Q** You weren't part of those e-mails, were you?  
 18 **A No.**  
 19 **Q** Now, you are aware that your daughter, Bernadette,  
 20 testified last week in this case?  
 21 **A Yes. I was sitting outside.**  
 22 **Q** You are aware that she said for the first time that  
 23 she saw Kalichenko in the basement?  
 24 **A Yes, I am.**  
 25 **Q** And you are aware that she told a similar story to

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F. Valerio - Cross/Kabrawala

943

- 1 yours?  
 2 MR. LATO: Objection.  
 3 THE COURT: Sustained as to form.  
 4 **Q** Who drove Bernadette to court that day?  
 5 **A I drive because my daughter is legally blind, as you**  
 6 **know.**  
 7 **Q** You drove her to court that day?  
 8 **A Yes.**  
 9 **Q** For her testimony?  
 10 **A Yes.**  
 11 **Q** You've been in the basement of your son's home?  
 12 **A I have, yes.**  
 13 **Q** Have you ever seen any hidden cameras in the  
 14 basement?  
 15 **A No, sir.**  
 16 **Q** Have you seen a hidden wall clock camera?  
 17 **A No, sir.**  
 18 **Q** Did you see a hidden camera in a platform or a stage?  
 19 **A No, sir.**  
 20 **Q** Now if there were any hidden cameras, is it fair to  
 21 say that you weren't aware of them?  
 22 MR. LATO: Objection.  
 23 THE COURT: Sustained as to form.  
 24 **Q** You weren't aware of any hidden cameras?  
 25 **A No.**

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F. Valerio - Redirect/Lato

944

1 Q You testified earlier that you support your son?  
 2 A Yes.  
 3 Q That you love him, etcetera, correct?  
 4 A Yes, sir.  
 5 Q [REDACTED] is your grand daughter, right?  
 6 A Yes.  
 7 MR. KABRAWALA: Nothing further.  
 8 THE COURT: Any redirect?  
 9 MR. LATO: Yes, your Honor.  
 10 REDIRECT EXAMINATION  
 11 BY MR. LATO:  
 12 Q Do you recall testifying a couple minutes ago that  
 13 you saw [REDACTED] in a magazine?  
 14 A Yes.  
 15 Q You remember the name of the magazine?  
 16 A I don't remember the name of the magazine, but  
 17 somehow in my mind I remember something about perhaps a  
 18 Halloween costume, but I don't remember the name of the  
 19 magazine.  
 20 Q And the picture, do you remember the picture itself  
 21 that was in the magazine?  
 22 A I think she had some sort of a Halloween costume on,  
 23 if I'm correct.  
 24 MR. LATO: No further questions.  
 25 THE COURT: Anything further?  
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1 attorneys just need five or ten minutes to set up for  
 2 that, so I'll ask you to take a short break.  
 3 Don't discuss the case.  
 4 We'll then proceed to summations.  
 5 Thank you.  
 6 (Whereupon, at this time the jury exits the  
 7 courtroom.)  
 8 THE COURT: Please be seated.  
 9 Mr. Kabrawala, let me know when you are ready.  
 10 (Whereupon, a recess was taken.)  
 11 THE COURT: Okay. Please be seated.  
 12 How long do you expect to be?  
 13 MR. KABRAWALA: One hour.  
 14 THE COURT: Then we'll just take a short break.  
 15 MR. LATO: Thank you, your Honor.  
 16 THE COURT: Maybe we'll go to 1:00.  
 17 How long do you think you will be?  
 18 MR. LAPINTA: Probably an hour as well.  
 19 Probably. Less or more.  
 20 THE COURT: Okay.  
 21 MR. BODE: So the Court is aware, the only  
 22 images that are being shown have been redacted.  
 23 THE COURT: Thank you.  
 24 (Whereupon, the jury at this time enters the  
 25 courtroom.)  
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*Official Court Reporter*

Proceedings

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1 MR. KABRAWALA: Just two questions.  
 2 RECROSS-EXAMINATION  
 3 BY MR. KABRAWALA:  
 4 Q You saw [REDACTED] in a magazine?  
 5 A Yes.  
 6 Q You don't have a copy of it?  
 7 A No.  
 8 Q You don't have a copy of that magazine?  
 9 A No.  
 10 THE COURT: Anything further?  
 11 MR. LATO: No, Judge.  
 12 THE COURT: Thank you, Mrs. Valerio. You are  
 13 excused.  
 14 Mr. Lato?  
 15 MR. LATO: The defense rests.  
 16 THE COURT: Okay. As you heard, the defense has  
 17 rested its case. We've completed the presentation of  
 18 evidence.  
 19 I'll ask the Government if there is any rebuttal  
 20 case.  
 21 MR. KABRAWALA: No, Judge.  
 22 THE COURT: So that completes the presentation  
 23 of evidence.  
 24 The next stage of the case are the summations,  
 25 or the closing statements, of the attorneys. The  
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*Official Court Reporter*

Proceedings

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1 THE COURT: Members of the jury, we'll proceed  
 2 to the closing statements, or summations. Let me repeat  
 3 what I said at the beginning.  
 4 The Government goes first, followed by defense  
 5 counsel. And then because the Government has the burden  
 6 of proof at all times, the Government gets to give what is  
 7 called a brief rebuttal summation where the Government is  
 8 allowed to get up again and give some brief summations.  
 9 I don't know if we'll be able to complete those  
 10 before the lunch break or not.  
 11 I want to give you a couple instructions with  
 12 respect to the closing statements. Again, I said this at  
 13 the beginning of the case; I want to emphasize it to you  
 14 again.  
 15 The closing statements, or the summations, of  
 16 the attorneys are not evidence. They are argument about  
 17 what the evidence does or does not show. And you are free  
 18 to accept or reject those arguments as you see fit, but  
 19 they are not evidence.  
 20 Second, the attorneys, during their summations,  
 21 may refer to certain testimony or other evidence that was  
 22 admitted during the course of the trial. I just want to  
 23 emphasize to you that if an attorney says that the  
 24 testimony was X and you don't remember it being that way,  
 25 you remember it being Y, it's what your recollection is of  
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*Official Court Reporter*

## Plaintiff's Closing Argument

948

1 the evidence that controls, not what an attorney says the  
2 evidence was. And if you have any question about that  
3 during deliberations, you can always send out a note for  
4 an exhibit or ask for read-back of the testimony.

5 The third instruction I want to give you, I do  
6 allow attorneys to make reference to the law during the  
7 summations. I've gone over with them my instructions on  
8 the law this morning.

9 So they may say to you, for example, I  
10 anticipate Judge Bianco will tell you X about the law.  
11 They are allowed to do that. But I want to remind you, if  
12 they say something about the law in their summations, and  
13 when you hear my instructions on the law and it is  
14 different from what the attorneys said, it is what my  
15 instruction is, not what the attorney says during his  
16 summations.

17 With those instructions, we'll now proceed  
18 starting with the Government.

19 MR. KABRAWALA: Thank you, Judge.

20 - - -

21 MR. KABRAWALA: At the time of this trial, we  
22 said the facts of this case are clear. Now that you've  
23 seen the evidence and heard the testimony, those facts are  
24 even clearer.

25 That man (indicating), the defendant, Joseph  
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## Plaintiff's Closing Argument

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1 Valerio, had a woman named Olena Kalichenko, who was  
2 located in the Ukraine, molest her daughter on video and  
3 sent the defendant those videos by e-mail. The defendant  
4 has sent dozens of e-mails to Kalichenko, and they are all  
5 in evidence.

6 When you go back to the jury room, you can  
7 review all the e-mails again (indicating), dozens of  
8 e-mails to Kalichenko directing her to do exactly what he  
9 said.

10 The evidence you've seen of this arrangement  
11 that the defendant and Kalichenko came to is spelled out  
12 in the e-mail. The defendant wanted custom-made child  
13 pornography videos involving Kalichenko's daughter,  
14 [REDACTED], a toddler.

15 You've also seen evidence that the defendant  
16 sexually exploited his own [REDACTED] a young girl who was six  
17 years old at the time, named [REDACTED]

18 You've seen the sexually explicit pictures of  
19 [REDACTED] that were taken in the defendant's own basement,  
20 just miles away in Smithtown.

21 As we said in our opening remarks, this case is  
22 about those two young girls that were sexually exploited.  
23 That's what this trial has been about.

24 Now the law requires the Government to establish  
25 the defendant's guilt beyond a reasonable doubt, and this

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## Plaintiff's Closing Argument

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1 summation is our opportunity to go back through the  
2 evidence and demonstrate how the Government has met that  
3 burden.

4 In this summation, we will set forth a timeline  
5 of events and then explain how the Government has met its  
6 burden beyond a reasonable doubt.

7 Now, you've heard testimony and seen evidence  
8 that even before the defendant had anything to do with  
9 Olena Kalichenko, even before they met, which was in the  
10 summer of 2011 -- the summer of 2011 was their initial  
11 e-mail exchange -- the defendant took sexually explicit of  
12 his [REDACTED]. That was even before the defendant met  
13 Kalichenko. The pictures of the [REDACTED] they were taken in  
14 September of 2010 and January of 2011.

15 You heard Bernadette Imperiale, [REDACTED] mother,  
16 testify that around 2010 or 2011, her brother, the  
17 defendant, Joseph Valerio, asked to have her daughter  
18 [REDACTED] model. She testified that [REDACTED] was born in  
19 January of 2005. She's nine and a half years old today.

20 The defendant said models could make money, so  
21 Ms. Imperiale let her brother take pictures of [REDACTED].  
22 The modeling took place in the basement of the defendant's  
23 residence at 3 High Gate Drive in Smithtown.

24 We saw in Government's Exhibit 508 -- this is an  
25 image recovered from a Samsung memory card that the agents

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## Plaintiff's Closing Argument

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1 found at the defendant's residence. We heard from  
2 Detective Rory Forrestal. According to the date/time  
3 stamp, the data associated with these images were taken --  
4 that the images were taken September 27th of 2010, and  
5 this one in particular at 3:39 p.m.

6 We not only heard that from Detective Forrestal,  
7 but we also heard that from the defense's witness,  
8 Mr. Gibbs, whom the defense paid to testify in this case.  
9 Mr. Gibbs acknowledged the same time stamp reflected what  
10 was indeed reflected in the pictures. Mr. Gibbs also  
11 conceded that he never turned the camera on, never saw the  
12 date/time stamp, never saw that is matched the actual  
13 date.

14 Detective Forrestal, by the way, turned the  
15 camera on twice, and he twice saw that the date actually  
16 matched the date that -- when he turned the camera on.

17 By the way, it is undisputed, there is no  
18 dispute, that the Samsung camera that was found in the  
19 defendant's home, this camera, Government's Exhibit 404,  
20 you know, with the black tape over it covering the  
21 indicator light, that this camera made those pictures.

22 You remember where this camera was found? It  
23 was found hiding in the basement ceiling, the dropped  
24 ceiling. The FBI literally had to take the ceiling down  
25 to find this camera.

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**Plaintiff's Closing Argument****952**

1 You saw the camera. That's where the agent  
2 found it (indicating). It was in this bag. And they  
3 found the camera in that bag the second time they searched  
4 the defendant's home. They didn't find it the first time.

5 And you know who bought that camera. You saw  
6 the receipt. The receipt was in the box. The box was in  
7 the defendant's basement -- sorry, the box was in the  
8 defendant's home. And you saw that he bought it. Very  
9 clearly, he bought it on May 7, 2010, the date of the  
10 invoice, sold by QVC, addressed to and sold to Joseph  
11 Valerio.

12 Guess what address? 3 High Gate Drive,  
13 Smithtown, New York, a Samsung 1080p Full HD camcorder  
14 with a zoom feature and a 4 GB SD card.

15 You've also seen images of [REDACTED] that were  
16 found on the SD card. This is one of the pictures. We've  
17 redacted the picture, but you saw the original, the  
18 picture that is focused on a young girl's genitals.

19 And you have seen the unique pattern of the  
20 furniture. It is this pattern (indicating) that's on  
21 Government's Exhibit 334 (indicating). It's the same  
22 exact person. This was taken from a basement sofa at the  
23 defendant's house. The cushions of the sofa.

24 Ms. Imperiale also testified, and you heard  
25 today from Mrs. Valerio that [REDACTED] dressed up in

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**Plaintiff's Closing Argument****953**

1 costumes. Mrs. Imperiale said one of the costumes was a  
2 fairy costume.

3 There is the fairy costume. The date that image  
4 was created, September 10, 2010, 3:47 p.m., minutes after  
5 the other picture you saw. That is Government's  
6 Exhibit 510.

7 Mrs. Imperiale also said her daughter was  
8 dressed up in a cheerleader outfit. You've actually seen  
9 the outfit and the pom-poms. That's Government's  
10 Exhibit 519. And that was created in the winter of 2011,  
11 January 19, 2011, right around the young girl's birthday.  
12 Right around her sixth birthday.

13 And of course you've seen that photo,  
14 Government's Exhibit 511. That's the file called cam\_0005.

15 We've seen the metadata, the data about data.  
16 We saw the metadata that that file was created January 19,  
17 2011, in the evening at 6:20 p.m.

18 You've seen the ball. You don't need to see the  
19 Spiderman ball again. It is clearly in the pictures and  
20 clearly in the defendant's basement.

21 You also saw a number of other pictures,  
22 Government's Exhibit 524, Government's Exhibit 528.

23 Let walk through this one.

24 Government's Exhibit 528 was in the deleted  
25 space of the Samsung memory card. What do you see here in

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**Plaintiff's Closing Argument****954**

1 Government's Exhibit 528? You see a black recliner that  
2 Agent Troyd testified about seeing. That black recliner  
3 is in Government's Exhibit 310. There's a picture of it.

4 You also saw Government's Exhibit 321, and you  
5 saw the blonde wig, the actual wig that was recovered from  
6 the defendant's basement, Government's Exhibit 338.

7 This is a sexually explicit picture of a young  
8 girl. She is naked. No clothes on except for a blonde  
9 wig.

10 Now, we submit that the evidence has been  
11 established that the defendant took those sexually  
12 explicit pictures of his own [REDACTED] [REDACTED], with a camera  
13 that he owned and that he took and hid in the basement  
14 ceiling.

15 You've also seen a number of other cameras. You  
16 saw the hidden camera in the clock. An agent looking at  
17 this from five feet away said he couldn't see the camera.  
18 It was a hidden camera, that was pointed at the sofa in  
19 the basement.

20 And you also saw this stage which is too heavy  
21 to manipulate at this point, Government's Exhibit 323.  
22 You saw the hidden camera in it. It's a stage, ladies and  
23 gentlemen. It has an upward-pointing camera.

24 The evidence has proven that those images were  
25 taken on September 10, 2010, and January 19, 2011.

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**Plaintiff's Closing Argument****955**

1 Now, about six months after that -- right? --  
2 this is the summer of 2011, what did we find in the  
3 defendant's inbox? This is an e-mail, Government's  
4 Exhibit 562, dated June 23, 2011, just past midnight,  
5 12:04:00 a.m.

6 It says: Hello, Joseph. What are your  
7 intentions? What kind of relations are you looking for?  
8 Are you currently in NYC?

9 She talks about possibly meeting.

10 What do you do for a living?

11 She invites him to ask her questions.

12 Just read the e-mail. This is an e-mail between  
13 two people who have never met each other. They are  
14 meeting online for the first time, and they are asking  
15 questions that you typically ask somebody when you meet  
16 online.

17 What are you looking for? Where do you live?  
18 Where do you work? What do you do for a living? Do you  
19 want to meet?

20 This is not an e-mail between people who know  
21 each other or who know where each other live, for that  
22 matter.

23 Then we saw Government's Exhibit 20.

24 Now, Government's Exhibit 562 is an e-mail from  
25 June 23, 2011.

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**Plaintiff's Closing Argument****956**

1 Government's Exhibit 20 is a travel record for  
2 Olena Kalichenko. And you heard the customs and border  
3 protection officer testify about this. It's a record of  
4 anyone coming in and anyone leaving the United States.

5 What does it say? It says: Arrival date,  
6 September 2, 2011. So that's a few months after. They  
7 talk, they exchange e-mails, and then a few months later  
8 she is coming to visit him.

9 Where does she stay? She stays at his address,  
10 3 High Great Drive, Smithtown, New York. She spends over  
11 a month with him, and she leaves on October 26, 2011. She  
12 is at his house presumably from September 22, 2011, for a  
13 little over a month. This is the fall of 2011.

14 When were the pictures of [REDACTED] taken? At this  
15 point they were taken in September of 2010. This is  
16 almost a year later that she comes to his house.

17 Now, you see the e-mail. She has visited him,  
18 Kalichenko has visited the defendant, December 2, 2011.  
19 This is Government's Exhibit 561. I feel as well [REDACTED]  
20 baby age is good too, so we are past the torturous waking  
21 up hours.

22 What are they talking about? They are talking  
23 about making a life together. He says he wants to promise  
24 her a ring. He wants total devotion. They are talking  
25 about getting their lives together, potentially being a

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**Plaintiff's Closing Argument****957**

1 father to [REDACTED]. And he says, I'm a great father and man  
2 who is very protective with love to my loved ones. Not to  
3 the point of control, no.

4 In the same e-mail -- this is December of  
5 2011 -- what does he say at the end? Sure would like to  
6 see some pictures.

7 They start talking about pictures.

8 Now, by the next month the defendant takes  
9 things in a very different direction.

10 January 22, 2012, right? That's about a month  
11 after of the e-mail we just saw, Government's Exhibit 557.  
12 You can read this. I don't need to read this again. He's  
13 directing her to do very specific things with her  
14 daughter, telling her where the daughter should place the  
15 kid's toys. He's telling her if he doesn't see this  
16 stuff, I'm going to drop you in the streets. That's how  
17 he's talking to this woman.

18 That is January.

19 The very next day, the defendant sent another  
20 e-mail January 23rd. It says: I have plans for you over  
21 here, seeing how sexually charged you are in those videos  
22 with [REDACTED]. He says: The videos are getting more  
23 creative by you with [REDACTED] and how you incorporate the  
24 toys.

25 Then again he spells out exactly what he wants

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**Plaintiff's Closing Argument****958**

1 to see. He says, I'll send out some money.

2 Now, ladies and gentlemen, this e-mail,  
3 Government's Exhibit 558, January 23, 2013, is one of  
4 eight attempt charges that the defendant is charged with.

5 The Judge will instruct you what an attempt is,  
6 and the Judge's instructions control, as the Judge said.  
7 Nothing I say should lead you to think otherwise. I'm  
8 simply offering some general explanation. I'll simply  
9 offer some general explanation on the law.

10 With respect to the attempted sexual  
11 exploitation of a child charge, eight of them, that simply  
12 means that the defendant took some substantial steps to  
13 sexually exploit the child. And we submit that the  
14 substantial step was the e-mail where he scripts out  
15 exactly what he wants to see.

16 Now the payment of money is not required as a  
17 substantial step, but we submit that it is evidence that  
18 he was serious about his intention. He says, give me the  
19 videos, and I'll send you some money (indicating), right?  
20 That's a substantial step.

21 There are eight attempt charges in addition to  
22 many other charges, and we'll talk about those later. But  
23 I wanted to flag that for you now because we'll be  
24 discussing the attempt charges as we go through the  
25 e-mails.

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**Plaintiff's Closing Argument****959**

1 Now, he says he'll send some money. Of course,  
2 January 24th, the same day, you see money go out from  
3 Joseph Valerio to Kalichenko in Sevastopol, Ukraine, \$150.

4 Government's Exhibit 559, January 24th, this is  
5 just the same day now.

6 This is one of the particularly graphic e-mails,  
7 right? Again, he's scripting out what he wants to see,  
8 but in this one he says: It is me you see; it's me you  
9 hear. It's me who touches you through [REDACTED]

10 Then he goes on. He says how he wants her to  
11 film it, as if he's a director, right? He wants sort of  
12 point-of-view images. He says: Film her from many  
13 angles. Let her explore. Make it count.

14 Then he says -- this is the MTCN number. We  
15 know what that is. You heard that from the Western Union  
16 representative, Charlie Johnson, a unique tracking number  
17 associated with each wire transfer done through Western  
18 Union.

19 January 24th, again, another e-mail, all  
20 recovered from the defendant's computer. Try to resend  
21 those videos from yesterday.

22 And he has movie file names. And you heard from  
23 Detective Forrestal that MOV is a movie file. He says,  
24 very nice one's with you and [REDACTED]

25 He says, great job. Right?

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**Plaintiff's Closing Argument****960**

1 And then he says: You can use the cell phone  
2 camera with one hand, grab your tits with the other, and  
3 from your eye view down to your sweet pussy, you will be  
4 recording [REDACTED]

5 He's showing her how to hold the camera, very  
6 specific in his demands.

7 Then what does he say? This will be like a  
8 French short film. We'll come up with a title.

9 All right. So now we're up a couple months to  
10 March 15, 2012.

11 He says -- Government's Exhibit 208: When I  
12 look back at the videos you made of you and [REDACTED]  
13 together, I said to myself, this can be very good if she  
14 can comply to my demands and not challenge them.

15 Okay. The bottom line is that you'll have to do  
16 all I ask you to.

17 If he doesn't intend her to make videos, why  
18 would he say that? Why would he say, you have to do all I  
19 ask you to?

20 He very clearly intends for these videos to be  
21 made and e-mailed to him.

22 This is another e-mail. It is also charged as  
23 an attempt. It is from March 28, 2012. Again, you can  
24 read the e-mail. They are all in evidence. You can ask  
25 for them.

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**Plaintiff's Closing Argument****962**

1 Do the videos with [REDACTED] the way I want. This is all the  
2 preparation you will need here in NY with [REDACTED], so it's  
3 best that you get used to it.

4 That's an attempt charge (indicating).

5 How do you know he's serious? Look at his  
6 language. There it is, in all caps.

7 By the way, look at the date of that e-mail,  
8 Government's Exhibit 560. April 4, 2012, e-mail. Right?

9 Look at the next e-mail, two days later,  
10 Government's Exhibit 564. This is to Angelique Davidse.  
11 You heard about Angelique today.

12 What does the defendant say? Happy third  
13 birthday, Alexa.

14 She's the defendant's daughter who lives in  
15 South Africa with her mother. Love and kisses always from  
16 daddy.

17 He calls [REDACTED] [REDACTED]'s sister. Grandma  
18 Bernadette, cousins Mario and [REDACTED].

19 Does that sound familiar? This is the  
20 defendant's own e-mail account he's sending two days after  
21 he sent Government's Exhibit 560.

22 Now, Government's Exhibit 216. This is the same  
23 month, April of 2012. What does the defendant say?

24 Helena, I looked at your videos. I'll give you  
25 credit for some.

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**Plaintiff's Closing Argument****961**

1 He says: Yes, of course it is good to see  
2 little [REDACTED] growing up nice and firm. Of course, being  
3 that I have control over [REDACTED], I want to see her in  
4 blonde, long hair, and as for you. Right?

5 Then he says -- describes what he wants. I will  
6 send out \$100. To who and where do you want me to send  
7 it?

8 Now, in Government's Exhibit 211, Mr. Egan,  
9 Robert Egan from Cablevision, testified about the IP  
10 address, internet protocol address. You remember what he  
11 said. This IP address beginning in 2004, that could only  
12 have been sent from the tristate area. Could not have  
13 originated from abroad or even outside of the tristate  
14 area.

15 And by the way, Government's Exhibit 211  
16 mentions long blonde hair. Does that sound familiar?  
17 (Indicating.)

18 April 4, 2012, this is a few days later. This  
19 is another attempt to charge. What does the defendant  
20 say?

21 Listen, Helena, I'm glad to see the smile on  
22 your daughter's face from the gift she got from the money  
23 I sent.

24 Then he says what he wants to see on video  
25 (indicating). He says: There is a price for everything.

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**Plaintiff's Closing Argument****963**

1 "I looked at your videos." He's seen the  
2 videos. He asks for them; he gets them. He asked for  
3 more, gets more. He paid money.

4 What does he do that day?

5 Government's Exhibit 332, the summary chart from  
6 Western Union -- sorry, he doesn't do it that day. Two  
7 days later.

8 What does he do? He sends money.

9 Now, later that month, Government's Exhibit 556,  
10 this is an e-mail from Olena Kalichenko to the defendant.  
11 Tracking number is -- this is in reference to a DHL  
12 package, ends in 6006.

13 She says: I have made a copy of the disk just  
14 in case.

15 Then she talks about it in the next paragraph,  
16 things that she wants to buy herself. I want to buy  
17 myself a new Nokia phone. It's a better camera and can be  
18 connected -- and it says: I will be able to send you  
19 videos from my new cell phone cam directly to your e-mail.  
20 We'll make plenty of videos for you from the new phone.  
21 Passionate kisses, Helena and [REDACTED].

22 DHL package tracking number that's in the  
23 e-mail, it's right here (indicating). That's April 27.

24 Well, you saw the packing slip. It's the same tracking  
25 number from Kalichenko, that's Olena Kalichenko, to

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**Plaintiff's Closing Argument****964**

1 Sevastopol, Ukraine. DVD disk, the contents.  
 2 Where is it addressed to? Joseph Valerio,  
 3 3 High Gate drive, Smithtown, New York.  
 4 What is the date? April 26, 2012.  
 5 Now, how do you know if this is the defendant's  
 6 e-mail?  
 7 How do you know that he's using his e-mail  
 8 account?  
 9 Well, you saw the e-mails from April that we  
 10 just went through.  
 11 What happens on April 25, 2012?  
 12 Government's Exhibit 567. This is an estimate  
 13 for landscaping. It starts off by saying: Hi, Joe, it  
 14 was a pleasure meeting you yesterday.  
 15 And there's a landscaping bill. You heard  
 16 testimony it was a landscaping estimate for over \$7,000.  
 17 That's how you know the defendant is using his e-mail  
 18 account.  
 19 Of course you know it is an e-mail account that  
 20 is registered to the defendant, or at least somebody with  
 21 the same name and address as the defendant.  
 22 What does 200-A say? That was introduced by  
 23 Mr. Egan. Cablevision provided these records in response  
 24 to a subpoena from the Government.  
 25 200-A says: Information for an e-mail address  
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**Plaintiff's Closing Argument****965**

1 joeval5@optonline.net.  
 2 Who is the subscriber? Joe Valerio.  
 3 What is his address? 3 High Gate Drive,  
 4 Smithtown, New York.  
 5 There's even a phone number.  
 6 This was a Cablevision subscriber from August  
 7 23, 2002, to March 19, 2014, about 12 years. And you also  
 8 heard that thousands of dollars were paid to maintain this  
 9 account over that 12-year period.  
 10 Now, if there is any doubt that this is the  
 11 defendant's e-mail address, you also saw records from  
 12 Western Union where each of the transactions -- that the  
 13 Western Union records say that the person with the same  
 14 exact name, home address, telephone number and e-mail  
 15 address sent over \$12,000 to someone named Olena  
 16 Kalichenko in Ukraine and sometimes in Turkey. These are  
 17 all joeval5@optonline.net.  
 18 Why? Because the defendant asked for videos,  
 19 paid money for the videos, got videos and asked for more.  
 20 Now, how else do you know that it is the  
 21 defendant sending e-mails?  
 22 This is an e-mail from Joe Valerio to Elena  
 23 Kalichenko dated July 3, 2012. What do they talk about?  
 24 He says he has a family time-share at Gurney's  
 25 out in Long Island; that he was in Brighton Beach; that  
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**Plaintiff's Closing Argument****966**

1 he'll think of Kalichenko.  
 2 What is the date of this? July 3, 2012, the day  
 3 before Independence Day, the 4th of July. That is  
 4 somebody who lives in the United States. That's not  
 5 someone logging into his account in Ukraine. That is  
 6 someone who is local, so local that you see that in  
 7 Government's Exhibit 225, a July 12, 2012 e-mail, you see  
 8 that the defendant -- he says: You and I split our times  
 9 in Smithtown and the Hamptons, of course, and [REDACTED]  
 10 And he goes on to say: I closed the business  
 11 deal. He's talking about properties in Nassau County, in  
 12 Brooklyn, Suffolk County, homes and buildings. He has  
 13 homes in Smithtown and Hamptons, jointly owned co-op, and  
 14 a time-share in Montauk. All in New York.  
 15 He's so local and so plugged in that he knows  
 16 real estate values. He's talking about real estate values  
 17 in Queens and Staten Island. This isn't somebody who is  
 18 hacking into his account from overseas. This is the  
 19 defendant writing these e-mails and talking about all his  
 20 properties.  
 21 And we submit the defendant is bragging about  
 22 everything he does and all of his business opportunities  
 23 and homes in the Hamptons and Smithtown and Montauk. He's  
 24 bragging.  
 25 Why is he bragging? Because he wants those  
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**Plaintiff's Closing Argument****967**

1 videos with [REDACTED]. He wants to impress Kalichenko  
 2 because he's going to keep her tethered. And he'll send  
 3 her money, and she'll make videos, and he'll ask for more.  
 4 He even says: It can easily be sent to my e-mail address  
 5 after filming.  
 6 Now, again, these are all more e-mails showing  
 7 that the defendant lives in the United States, not abroad.  
 8 He's asking her in Government's Exhibit 210 -- telling  
 9 her, when you arrive in the US -- right? He knows she's  
 10 abroad too. Because when you arrive back in Istanbul,  
 11 Turkey. Sending her money from New York to Turkey, to  
 12 Ukraine.  
 13 He says: Where do you want the money wired to?  
 14 When you are back home in the Ukraine?  
 15 Now, that brings us back to Government's  
 16 Exhibit 205. This is the July 16, 2012, e-mail.  
 17 Midsummer 2012.  
 18 Now, July 16th and July 22, 2012, they are all  
 19 contained within Government's Exhibit 205. They are both  
 20 separately charged as attempts.  
 21 You heard from Special Agent Steven Troyd of the  
 22 FBI that the defendant confessed to sending both of these  
 23 e-mails when they met with him in his house. Not only did  
 24 the defendant confess to sending those 2-E-mails in July  
 25 of 2012, but Detective Rory Forrestal conducted forensic  
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**Plaintiff's Closing Argument****968**

1 examinations of the defendant's computer, a computer that  
 2 was seized from the defendant's house, and he recovered  
 3 child pornography. That's the computer that's in evidence  
 4 as Government's Exhibit 400. And the hard drive found in  
 5 the computer is in evidence as Government's Exhibit 401.

6 Let's briefly talk about the July 16th e-mails  
 7 and why they are attempts.

8 In this one he literally says, literally says:

9 As far as the script, do the same with our [REDACTED]  
 10 delicious little pussy, you know, in the tub, the way you  
 11 would eat her so sweet. Of course panty hose and tights.

12 That's the same language that Agent Troyd read  
 13 to the defendant during his confession. And we'll return  
 14 to that later on. But that's the same exact language that  
 15 the defendant acknowledged that he sent.

16 He even talks about instructing Kalichenko on  
 17 what to do.

18 What does he say at the end of the e-mail? Get  
 19 those videos done.

20 July 22nd, again -- this is Government's  
 21 Exhibit 205. This is another e-mail that the defendant  
 22 admitted sending: Do you actually think it is about the  
 23 videos you agreed to do with your daughter? You are  
 24 crazy. The main reason I'm giving you this chance to come  
 25 and build a life here is because you and [REDACTED] offered me

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**Plaintiff's Closing Argument****970**

1 actually from March 18, 2013, Government's Exhibit 245.  
 2 This is -- this has nothing to do with Kalichenko. This  
 3 is an e-mail from the defendant to his son Andre, talking  
 4 about Islanders tickets. I believe they were hosting the  
 5 Canadians that night. Order for Joseph Valerio.

6 Again, it is an order that was sold to  
 7 joeval5@optonline.net. He even says to his son what his  
 8 e-mail address is, as if there were any questions that the  
 9 defendant's e-mail address is joeval5@optonline.net.

10 And remember the IP information for that e-mail?  
 11 Mr. Egan testified that the IP address for that  
 12 Ticketmaster e-mail is 69.118 IP address.

13 Guess what? That's the same IP address as the  
 14 July 22, 2012, e-mail that the defendant scripted out and  
 15 sent to Kalichenko. And he admitted that he sent it.  
 16 Same IP address. A domestic IP address. It's not only  
 17 that, but an IP address from the tristate area. Because  
 18 Cablevision doesn't operate outside of the tristate area.  
 19 You heard that testimony.

20 That brings us to the videos. We were  
 21 progressing through the summer of 2012. You just heard  
 22 about the July 22, 2012 e-mail.

23 Well, July 23, 2012, this was an e-mail found on  
 24 the defendant's computer attached to which there was child  
 25 pornography videos of [REDACTED] and her mother. Just like

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**Plaintiff's Closing Argument****969**

1 something different that my other girls don't have and  
 2 can't supply to me now. So it is you that fits that  
 3 equation.

4 Later on in that e-mail, what does he say? I  
 5 was actually able to see some girls come in their panty  
 6 hose. Speaking of which, I want to see more of you and  
 7 [REDACTED].

8 Then he says what he wants [REDACTED] to do. He  
 9 says he wants her to be dressed in tights.

10 Does that sound familiar?

11 You've seen the tights.

12 Try to get this all done -- sorry. Try to get  
 13 this to me all by tomorrow.

14 Now, with respect to Government's Exhibit 205,  
 15 July 22, 2012, e-mail, you also saw an e-mail header. You  
 16 remember what an e-mail header is, right?

17 Robert Egan of Cablevision said it is data that  
 18 is behind the e-mail. Shows where it was sent from, the  
 19 IP address it was sent from.

20 What did Mr. Egan testify about this particular  
 21 e-mail header? It was an IP address that started with 69.

22 Again, Mr. Egan testified that this e-mail could  
 23 only have been sent from the tristate area. Couldn't have  
 24 been sent from abroad.

25 By the way, you also saw this e-mail. It is

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**Plaintiff's Closing Argument****971**

1 the defendant asked, right?

2 (Indicating.)

3 In the e-mail from July 23rd, Joseph Valerio,  
 4 joeval5@optonline.net, is talking about an MTCN number.  
 5 He says: You indicated that you have more videos to send  
 6 via e-mail.

7 Again, what is the MO, right? Ask for; pay for;  
 8 get more.

9 By the way, you get the correct spelling of  
 10 [REDACTED] name in this e-mail. Ms. Kalichenko says:  
 11 Regarding [REDACTED] adoption, make sure you spell her name  
 12 right. [REDACTED]. And she says, [REDACTED]

13 There's not two [REDACTED] just a misspelling of  
 14 her name.

15 Guess what? The day that the defendant gets  
 16 these videos he's been asking for, he sends Kalichenko  
 17 \$900, according to Government's Exhibit 322. \$900. That  
 18 is the most that the defendant had paid Kalichenko to  
 19 date.

20 Why did he pay her so much? You saw, he just  
 21 got the videos.

22 Progressing into the fall. Again, gets the  
 23 videos; wants more.

24 Government's Exhibit 229, 9/6/12. What does he  
 25 ask for? More videos with you and [REDACTED]. He says: Hmm,

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**Plaintiff's Closing Argument****972**

1 I do enjoy, and soon you can bring her little more mature,  
 2 recognizing that she is a very young child. She's a  
 3 toddler. Soon she'll grow up, and you will continue to  
 4 make videos for me.  
 5 What does he say in the same e-mail,  
 6 Government's Exhibit 229? He wants to see the "usual  
 7 videos of you and sweet [REDACTED]." He wants her to do  
 8 certain things that is spelled out in the e-mail that I'll  
 9 not repeat.  
 10 What does he do that day? An MTCN. We know  
 11 what that means. That's money. How much? \$1,000. That  
 12 e-mail, September 6th, is an attempt charge.  
 13 MR. LAPINTA: Objection.  
 14 THE COURT: Overruled.  
 15 MR. KABRAWALA: What happens the very next day?  
 16 This is an e-mail found on the defendant's  
 17 computer.  
 18 What happens the very next day? Western Union  
 19 pickup notification, Government's Exhibit 551. Just like  
 20 the defendant said in his e-mail, Government's  
 21 Exhibit 229. The very next day, money is sent. How much?  
 22 The exact amount that is spelled out in the e-mail.  
 23 By the way, it is also the same MTCN number.  
 24 \$1,000. That was the most he had paid her to  
 25 date. You saw he paid her 900 on July 23, 2012. Well, he

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**Plaintiff's Closing Argument****973**

1 pays her more.  
 2 What happens in September? Continues to send  
 3 her e-mails, Government's Exhibit 230. How are you doing?  
 4 I hope [REDACTED] is doing much better now. I knew somehow  
 5 she just had a cold. I'm sure it is just a change of  
 6 temp, T-E-M-P.  
 7 What does he say in the same e-mail? I need to  
 8 see results. And when your daughter is fine and you are  
 9 prepared, I need to see videos e-mailed to me of you and  
 10 [REDACTED].  
 11 She's sick. And when she's all better, make  
 12 sure you get me the e-mails, the videos.  
 13 September 27th. Again, this is the fall of  
 14 2012. What does he say? Government's Exhibit 2. This  
 15 was an e-mail that Kalichenko provided to Special Agent  
 16 Angelini while he was stationed in Kiev, Ukraine.  
 17 He says: Your daughter is supposed to be sick.  
 18 He says: Listen. What are you doing e-mailing? Why the  
 19 fuck are you writing mails at 9:30 when your daughter is  
 20 supposed to be sick? Are you starting to be a sneaky  
 21 bitch again? I'm asking you now, what the fuck do you do  
 22 all day? And you have produced nothing for me.  
 23 He then goes on to say: Each morning and night  
 24 you will send me a cell phone video of you waking up with  
 25 your daughter, with your tits in her mouth, etcetera,

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**Plaintiff's Closing Argument****974**

1 etcetera. And if I don't see this each day, I will drop  
 2 you on your ass.  
 3 Does that sound familiar?  
 4 This is all caps.  
 5 September 22 is Government's Exhibit 2, right?  
 6 Very serious about his requests here. Very clear  
 7 language.  
 8 What happens three days later? He gets the  
 9 videos. He asks for them; he gets them.  
 10 This was an e-mail of September 30, 2012,  
 11 Government's Exhibit 503-G as in golf. Subject: Videos.  
 12 Attachments. We saw them.  
 13 What happens two days later? More videos.  
 14 Again, found on the defendant's computer.  
 15 504-E as in echo. These videos were found on  
 16 the defendant's computer.  
 17 Mr. Gibbs testified as much. The defendant's  
 18 own witness.  
 19 I want to bring you back to the beginning of the  
 20 trial.  
 21 The defendant has no burden of proof whatsoever.  
 22 His counsel gave an opening statement, and the defendant  
 23 doesn't have to testify. The Judge reminded you of that  
 24 several times. But remember what defense counsel said.  
 25 They seized all of Mr. Valerio's computers, all

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**Plaintiff's Closing Argument****975**

1 the hard drives, the CD, DVD, imagery cards, all type of  
 2 memory media the FBI seized. And what of the toddler in  
 3 the video in the Ukraine? It's highlighted. Not on any  
 4 of the computers, any of the hard drives or any of the  
 5 media.  
 6 What did Mr. Gibbs say? The defendant's own  
 7 witness?  
 8 Question: Did you find child pornography on the  
 9 hard drive?  
 10 Answer: Yes.  
 11 It's a very simple answer.  
 12 Now, the opening statement, and the actual  
 13 evidence (indicating).  
 14 Now when agents came to the defendant's house on  
 15 January 28, 2014, that was about eight weeks after  
 16 Kalichenko warned him in text messages, Viber text  
 17 messages, that the FBI was coming for him.  
 18 The defendant voluntarily gave a statement after  
 19 he was Mirandized, provided his rights. Signed away his  
 20 rights, and he sat there and he told the agents, admitted  
 21 to the agents that he sent the e-mails, both of which he  
 22 is charged with crimes. He scripts out how he wants  
 23 Kalichenko to molest this child on video.  
 24 He admitted he received those videos by e-mail,  
 25 and he offered an explanation as to why he did it. He

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**Plaintiff's Closing Argument****976**

1 said: I had paid Kalichenko thousands of dollars, and I  
 2 wanted something in return. I want videos of child  
 3 pornography, of her molesting her daughter in return.  
 4 The evidence has shown both the defendant and  
 5 Kalichenko, his coconspirator, got exactly what they  
 6 wanted. The defendant got videos, plenty of them, and he  
 7 paid for them. Kalichenko got money.

8 Now let me turn to the charges.

9 As to [REDACTED], the Ukrainian toddler, the  
 10 defendant is charged for his conspiracy with Kalichenko to  
 11 sexually exploit the toddler. He has been charged with  
 12 child exploitation, transportation of child pornography,  
 13 receipt of child pornography, and also the various attempt  
 14 charges. The Judge will go over this again with you in  
 15 greater detail.

16 As I said, nothing I say about the law should  
 17 trump what the Judge says. The Judge will instruct you  
 18 more specifically on the law, but I'll just offer some  
 19 general explanation about the charges.

20 Now with respect to the acts, the defendant's  
 21 acts involving his [REDACTED] he's charged with sexually  
 22 exploiting the child, and the defendant is also charged  
 23 with possessing child pornography involving both of the  
 24 young girls.

25 Let's talk for a minute what it means to

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**Plaintiff's Closing Argument****978**

1 the purpose of producing a visual depiction of that  
 2 conduct.

3 Third, the Government must show there is a link  
 4 to interstate or foreign commerce.

5 Let's take each of these elements in turn.

6 With respect to the first element, there is  
 7 really no dispute that [REDACTED] is a real toddler. You've  
 8 seen the videos and the pictures. You've read the  
 9 e-mails. The videos and the pics show a real person, and  
 10 that real person was a toddler, somewhere between the ages  
 11 of two and three.

12 Again, she is a minor, under 18. She is  
 13 somewhere between two and three. Whether she is two or  
 14 three, it's really academic at that point. She's a  
 15 toddler. You can see her in the pics. You can hear her.

16 Now, you also know that [REDACTED] is a real child.  
 17 Her grandmother came and testified. Her mother came and  
 18 testified. This is a real person born in [REDACTED].  
 19 You've seen her pictures, and you've heard from Special  
 20 Agent Troyd from the FBI that he has actually seen [REDACTED].

21 Second, the Government must prove that the  
 22 defendant used these two minors to engage in sexually  
 23 explicit conduct for the purpose of producing a visual  
 24 depiction of that conduct.

25 I'll break that down.

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**Plaintiff's Closing Argument****977**

1 sexually exploit a child under the law.

2 Stated simply, it is illegal to use a minor to  
 3 engage in sexually explicit conduct for the purpose of  
 4 providing a visual depiction of that conduct. Let me say  
 5 it again. It is illegal to use a minor to engage in  
 6 sexually explicit conduct for the purpose of making a  
 7 visual depiction of that conduct.

8 We submit that is exactly what the defendant has  
 9 done. And that is exactly what he is guilty of.

10 With respect to the sexual exploitation of  
 11 [REDACTED], the Ukrainian toddler, the Government can meet its  
 12 burden of proof beyond a reasonable doubt by showing that  
 13 the defendants aided and abetted someone else. In this  
 14 case, that someone else is Ms. Kalichenko. And the  
 15 evidence against the defendant is overwhelming.

16 There are three major elements to prove that a  
 17 crime of sexual exploitation of a child has taken place.  
 18 I'll go over them generally and then in more detail.

19 First, the victims. Here it is the Ukrainian  
 20 toddler name [REDACTED] and the child here name [REDACTED].

21 The Government must establish beyond a  
 22 reasonable doubt that those children are real children  
 23 under the age of 18 years old at the time of the offense.

24 Second, the Government must prove that the  
 25 defendant used a minor in a sexually explicit conduct for

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**Plaintiff's Closing Argument****979**

1 The Government has to prove that the defendant  
 2 used [REDACTED] and used [REDACTED] for the purpose of providing  
 3 or transmitting a visual depiction of them engaged in  
 4 sexually explicit conduct.

5 How do you know that the defendant acted with  
 6 this purpose?

7 Well, with respect to [REDACTED], you've seen the  
 8 dozens upon dozens of e-mails where the defendant scripts  
 9 out exactly what he wants Kalichenko to do with her young  
 10 daughter. You've seen some of them again today, and they  
 11 are all available to you again in that big binder. Just  
 12 ask for it if you want to read them again.

13 How do you know that the defendant acted with  
 14 this purpose with the defendant [REDACTED], the [REDACTED]?

15 Look at how he dressed her up and how he  
 16 undressed her. In some of the pictures the camera is  
 17 focused only on her genitals, and in some of the pictures  
 18 she's wearing lace tights, and she is shot from behind,  
 19 from the bottom down. And in one of the pictures she's  
 20 dressed in a blonde wig and nothing else.

21 How do you know that the videos and images  
 22 you've seen are a minor engaged in sexually explicit  
 23 conduct?

24 Well, you'll hear the law and what the  
 25 definition is under the law what constitutes sexually

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**Plaintiff's Closing Argument****980**

1 explicit conduct. And after hearing the Judge's  
2 instructions in that regard, we submit to you that you  
3 will find there is no doubt that the girls were engaged in  
4 sexually explicit conduct.

5 One of the definitions of sexually explicit  
6 conduct is actual or simulated sexual intercourse. Sexual  
7 intercourse, including oral to genital contact or  
8 masturbation.

9 With respect to [REDACTED] the Ukrainian toddler,  
10 you've seen the videos. The videos show Kalichenko  
11 actually performing oral sex on the toddler. They also  
12 show Kalichenko using the toddler's foot to masturbate  
13 herself.

14 You also saw a video of Kalichenko -- you also  
15 saw a video of the toddler using a toy to masturbate her  
16 mother, Kalichenko, and a toy to masturbate herself.

17 So we submit to you that that is very clear  
18 evidence of sexually explicit conduct.

19 What is another definition? You'll hear the  
20 Judge say this. Sexually explicit conduct also includes  
21 lascivious exhibition of the pubic area of a person.

22 Lascivious. What does that mean? That it shows  
23 the genital or pubic area of a child in order to excite  
24 lustfulness or sexual stimulation of the viewer, or where  
25 the focal point is the child's genital or the child is

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**Plaintiff's Closing Argument****982**

1 You saw with respect to [REDACTED] -- you've heard  
2 testimony that the Samsung digital camera was assembled in  
3 China, and you've also heard testimony that the SD card,  
4 the Samsung memory card, was made in Korea.

5 So again, the Government has satisfied those  
6 elements.

7 Based on all of the evidence, we submit that the  
8 Government has proven Count 2, which is sexual  
9 exploitation of the Ukrainian toddler [REDACTED], and Count  
10 14, which is sexual exploitation of [REDACTED], the  
11 defendant's [REDACTED].

12 Now, Count 3. I want to talk about that very  
13 briefly.

14 Count 3 charges sexual exploitation of a child  
15 outside the United States. It's a stand-alone charge  
16 where a child is exploited outside the United States.

17 In addition to the three elements I just talked  
18 to you about, the Government has to prove the fourth  
19 element, and that fourth element is that the defendant  
20 intended for the sexually explicit depiction to be  
21 transported from a place outside of the United States to a  
22 place inside the United States.

23 It is very clear that the Government has proven  
24 that. We've read all the e-mails. On numerous occasions  
25 the defendant mentioned that he wants Kalichenko to send

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**Plaintiff's Closing Argument****981**

1 depicted in a sexually suggestive manner.

2 Again, you've seen the images of [REDACTED]. They  
3 speak for themselves. The focal point in one of the  
4 images is just her vagina, just her genitals. You've seen  
5 her dressed up in a stocking and wig and shot from behind.

6 Is there any doubt that defendant's e-mails to  
7 Kalichenko demonstrate his sexual interest in such things  
8 as blonde hair and panty hose and tights and stockings?

9 Third, the Government has to show there is a  
10 link to interstate commerce or foreign commerce. The  
11 Government can show this link in several different ways,  
12 and you need only find proof beyond a reasonable doubt on  
13 this element in one way. You don't need to find it among  
14 every single method of proving it.

15 With respect to [REDACTED], the simplest way you can  
16 find the defendant guilty on this element is that the  
17 images were transmitted through the internet, sent by  
18 e-mail. You've seen the e-mails found on the defendant's  
19 computer.

20 Second, the device on which the images were  
21 created or stored were manufactured outside of New York,  
22 right, and the Government has proven that.

23 You saw the hard drive itself, this hard drive,  
24 Government's Exhibit 401. Where does it say it was made?  
25 Do you remember that? Malaysia.

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**Plaintiff's Closing Argument****983**

1 him those videos from Ukraine; when she gets back to the  
2 Ukraine; see her daughter in the Ukraine; send me those  
3 videos.

4 Government 243 is a July 5, 2012, e-mail where  
5 he specifically says he'll send money to Kalichenko in  
6 Ukraine for the videos.

7 Speaking of money, how else do you know that the  
8 defendant intended for the videos to come from abroad into  
9 the United States? Well, he sends her thousands of  
10 dollars abroad. He knows where she is when she's picking  
11 the money up. He gets the notification. You've seen the  
12 records; you know she's abroad.

13 Count 1. I want to talk about that very  
14 briefly. It charges the defendant with the crime of  
15 conspiring to sexually exploit [REDACTED]. That's the  
16 Ukrainian toddler.

17 Now, the Judge is going to -- again, he's going  
18 to instruct you what it means to conspire with someone,  
19 but it essentially means there is an agreement between two  
20 people. Conspiracy equals agreement, right?

21 And that agreement for purposes of convicting  
22 the defendant doesn't require a written agreement. It  
23 doesn't have to be a contract of any kind. It doesn't  
24 have to have taken place in a boardroom or a conference  
25 room or an office.

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**Plaintiff's Closing Argument****984**

1 Now, how do we know that the defendant agreed  
2 with Kalichenko?  
3 Well, even though the Government doesn't have to  
4 show that the defendant agreed to anything in writing, we  
5 have writings, we have the e-mails, the dozens of e-mails  
6 that the defendant sent to Kalichenko, right?

7 We also have Government's Exhibit 214, April 12,  
8 2012, e-mail. Joeval5@optonline.net. What does he say?

9 He says: Remember my words. You will need to  
10 do all I ask you in video with [REDACTED] when you are with  
11 her. This unique situation separates you from the rest I  
12 have here.

13 What does he say in capital letters? "Do you  
14 now understand what I'm telling you?"

15 How does he end the e-mail? "Do we understand  
16 each other?"

17 What does she write back to him? What does  
18 Kalichenko say in her April 12th reply from the same day?

19 Yes, Joseph, we do understand each other.  
20 Delivering new videos of [REDACTED] the exact way you request.

21 Right, that's the agreement. If there was any  
22 doubt that there is an agreement, there's proof,  
23 Government's Exhibit 214, which is in evidence.

24 Oh, and by the way, that same day the defendant  
25 sent her money. So if there was any doubt -- again, do we

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**Plaintiff's Closing Argument****985**

1 have an agreement? I understand exactly what you are  
2 saying. And by the way, here's the money.

3 How else do we know that the defendant conspired  
4 with Kalichenko? Because she actually sends him the  
5 videos, right, just as he demands it.

6 She didn't say, get lost. She says, here's the  
7 videos just like you asked for.

8 When he got the videos, again, what did he do?

9 We all know what he did. He asks for more, and  
10 he paid her.

11 We've also discussed attempts. There's eight  
12 separate attempts, all linked to specific e-mails that the  
13 defendant sent to Kalichenko. They are all very specific,  
14 and they are all in evidence, and we reviewed all of them  
15 today. But needless to say, they speak loudly and clearly  
16 what the defendant intends.

17 Transportation of child pornography, Count 4 of  
18 the indictment. And again, the indictment is just a  
19 charge. The defendant is charged with transporting child  
20 pornography.

21 The Government can meet its burden of  
22 establishing this charge by showing that the defendant  
23 aided and abetted in the transportation of child  
24 pornography.

25 In essence, you are required to determine

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**Plaintiff's Closing Argument****986**

1 whether he knowingly had a visual depiction of a minor  
2 engaged in sexually explicit conduct shipped or  
3 transported in interstate or foreign commerce. Right.

4 And how do we know that he knew that sexually  
5 explicit videos of [REDACTED] would be transported? He asked  
6 for them. And he knew that [REDACTED] was a minor. He wanted  
7 very specific sex acts to be performed on her, and that's  
8 what he got. Got them all sent straight to his inbox via  
9 the internet.

10 Receipt of child pornography. This is the same  
11 analysis as transportation but instead focuses whether the  
12 defendant received it, knowingly received child  
13 pornography images.

14 You know that he did. It's undisputed that  
15 there were child pornography videos on his computer, sent  
16 to him by Kalichenko in response to his e-mail, the videos  
17 he paid for. This is the same analysis as I've already  
18 discussed.

19 And how do you know that he possessed it?  
20 Again, he asked for it; he got it; paid for it. It was  
21 all on the computer, and it was on the defendant's one on  
22 January 28, 2014, the day of the first search warrant.  
23 That's when the computer was taken. That's what the  
24 indictment says as the date that the defendant possessed  
25 the child pornography involving both of the young girls.

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**Plaintiff's Closing Argument****987**

1 Now, in conclusion. Based on all the evidence,  
2 the Government submits to you it has proven the defendant  
3 guilty beyond a reasonable doubt on all of the charges.

4 We want to thank you for your patience and  
5 attention during these last two weeks. I realize that  
6 this has not been an easy trial, and it certainly is not  
7 an easy trial to be selected as jurors on.

8 You've been asked to hear some deeply disturbing  
9 e-mails and language and see some even more disturbing  
10 videos and images.

11 So, again, we want to thank you for your  
12 service.

13 We've gone through all of the evidence. The  
14 case and the facts are clear.

15 You were selected as jurors because of your  
16 willingness to consider all of the evidence, to scrutinize  
17 it, to hold the Government to its burden. As you begin  
18 your deliberations, we ask that you use your reason and  
19 your common sense, that same common sense that guides you  
20 every single day of your lives.

21 When you listen to the law that the Judge  
22 explains and you use your common sense as it applies to  
23 the facts, we believe that you will see that there's only  
24 one reasonable conclusion that can be drawn from the  
25 evidence, that is, that the defendant is guilty on each

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## Plaintiff's Closing Argument

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1 count beyond a reasonable doubt and that he should be held  
2 accountable for his crimes, held accountable for his  
3 crimes against children.

4 Thank you.

5 THE COURT: Members of the jury, we'll take a  
6 15-minute break. I think we'll try to go until 1 o'clock  
7 and then take a lunch break and see where we stand.

8 Don't discuss the case.

9 We'll resume at 12:15.

10 (Whereupon, at this time the jury exits the  
11 courtroom.)

12 (A recess is taken.)  
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## Summation/LaPinta

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1 speak to you because I believe that my message is both  
2 important and compelling.

3 Please give me the same attention that you have  
4 given to Mr. Kabrawala. Just because he went first and  
5 will speak last doesn't mean that my message and my words  
6 are less important than his.

7 I'm going to speak to you. I'm not going to  
8 pound my hands on this lectern to startle you or to try to  
9 command your attention.

10 I hope that my words and my arguments alone will  
11 deserve and earn your attention.

12 I'm not going to engage in theatrics to try to  
13 bolster my arguments. The facts I speak of will speak for  
14 themselves.

15 I will certainly not point to anyone in this  
16 courtroom with a finger and a fist. I will point only to  
17 the facts and the evidence that I strongly believe will  
18 significantly undermine the government's case that you  
19 have heard.

20 Obviously, the nature of this case has been  
21 difficult for everyone in this courtroom. It involves  
22 children, children that we adore, children that we  
23 nurture, children that we should all respect.

24 The child pornography that you have seen in this  
25 case has no place in our society, either here in the

HARRY RAPAPORT, CERTIFIED REALTIME REPORTER  
Official Court Reporter

## Summation/LaPinta

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1 THE COURT: It is almost 12:25. I don't think  
2 we will get this done before the lunch break

3 When you get to a convenient spot around 1:00  
4 o'clock, just tell me.

5 MR. LaPINTA: If you can do me this favor, in  
6 the past I kind of get consumed doing this and lose track  
7 of how long it is going. If you give me a five minute  
8 heads-up, please?

9 THE COURT: I will tell you at five to 1:00 if  
10 you get to a convenient spot we will break.

11 MR. LaPINTA: Thank you.

12 THE COURT: Okay.

13 (Whereupon, the jury at this time entered the  
14 courtroom.)

15 THE COURT: Everyone be seated.

16 We will now hear the summation of defense  
17 counsel, Mr. LaPinta.

18 MR. LaPINTA: May it please the Court, Judge  
19 Bianco.

20 Mr. Kabrawala, Mr. Bode, Agent Troyd, Mr. Lato,  
21 Mr. Valerio.

22 Ladies and gentlemen of the jury:

23 Up to now you have only heard me speak to others  
24 in the form of questions. But now I will have a chance to  
25 speak directly to you. And I relish this opportunity to

HARRY RAPAPORT, CERTIFIED REALTIME REPORTER  
Official Court Reporter

## Summation/LaPinta

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1 United States or anywhere in this world, including eastern  
2 Europe.

3 And I say to you the following: As a man  
4 committed to my family, as a father committed to my young  
5 daughter, as an officer of this court and a lawyer  
6 committed to my client's best interest, there is no place  
7 for child pornography in our society. For me to say  
8 otherwise would be outrageously wrong.

9 Now, just as we are a society here committed to  
10 upholding our laws that protect our children, we are a  
11 society here committed to upholding our laws that protect  
12 and govern all other people as well. Our laws involve  
13 civil rights laws that give us rights here in the United  
14 States. There are laws that regulate and control our  
15 government. There are laws that regulate and guide our  
16 justice system. And there are laws that assure the  
17 fairness of our criminal justice system when it comes to  
18 evaluating guilt or innocence of an accused person. We  
19 have laws and rules that demand fairness in our criminal  
20 justice system, and they are as equally as important as  
21 our laws that protect our children. And nobody in this  
22 courtroom would disagree or argue with that.

23 In other words, ladies and gentlemen, you must  
24 be equally devoted here to upholding our laws that protect  
25 [REDACTED] and [REDACTED], and the laws that assure that

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<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>992</b></p> <p>1 Mr. Valerio is given a fair trial. Those two -- three</p> <p>2 people are the essence of your consideration here and that</p> <p>3 require your fair understanding and deliberation of these</p> <p>4 facts.</p> <p>5 Judge Bianco will soon instruct you on the law</p> <p>6 that is involved in this case and the rules that will</p> <p>7 govern your deliberations. You must, must follow those</p> <p>8 rules, even if you don't agree with them. The rules he</p> <p>9 will give you are the cornerstones of our criminal justice</p> <p>10 system. They are rules that are indispensable,</p> <p>11 unavoidable, rules that you must adopt and follow.</p> <p>12 The first rule is a rule that Mr. Valerio is</p> <p>13 presumed an innocent man. And just because he is sitting</p> <p>14 there at that defense table doesn't mean that he is guilty</p> <p>15 of anything. He has been merely charged. He has been</p> <p>16 merely accused.</p> <p>17 And while you may have an instinct that because</p> <p>18 he is seated there at that table he must be guilty of</p> <p>19 these offenses, you must rid yourself of that instinct</p> <p>20 because there is no place for that instinct in this</p> <p>21 courtroom. He is presumed innocent until the prosecutor</p> <p>22 proves his guilt to you.</p> <p>23 The government, Mr. Kabrawala, has the burden of</p> <p>24 proof in this case. And it is only the government that</p> <p>25 has the obligation and responsibility of proving facts to</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>	<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>994</b></p> <p>1 against him in any way.</p> <p>2 So if you feel that because Mr. Valerio has not</p> <p>3 testified in this case and that he must be guilty because</p> <p>4 he didn't testify, you must also cleanse yourself of that</p> <p>5 feeling and those instincts. There is no room for that</p> <p>6 here in this trial.</p> <p>7 And lastly, Mr. Valerio as an accused has a</p> <p>8 right to a fair trial, a fair process, a due process right</p> <p>9 to a fair trial. He has the right for the uninfluenced</p> <p>10 disciplined review of his evidence that has been offered</p> <p>11 against him, that is guided only by the laws and rules</p> <p>12 that Judge Bianco will give you.</p> <p>13 Fairness is not being influenced by theatrics.</p> <p>14 Fairness is not being influenced by loud comments at</p> <p>15 counsel table that you heard or may have heard, and by</p> <p>16 lawyers that point to people in this courtroom. Fairness</p> <p>17 is also not being influenced or dictated by your emotions.</p> <p>18 You must set aside your strong emotions in this</p> <p>19 case. I know you have strong emotions about this case.</p> <p>20 Everybody has strong emotions about this case in this</p> <p>21 courtroom. I watched you very closely when you first</p> <p>22 became involved in this case two weeks ago as prospective</p> <p>23 jurors. I watched very closely. Because when you were</p> <p>24 told that this case involves child pornography, your</p> <p>25 non-verbal cues, your appearances, spoke a lot to me.</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>
<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>993</b></p> <p>1 you in this courtroom. An accused -- a defendant or his</p> <p>2 lawyers -- do not have to prove anything. We don't have</p> <p>3 to prove that he is innocent.</p> <p>4 Mr. Valerio and the defense are not required to</p> <p>5 prove or disprove a thing.</p> <p>6 If you feel anyway that we should have to prove</p> <p>7 his innocence, you must also rid yourself of those</p> <p>8 feelings and instincts. They have no room in this</p> <p>9 courtroom.</p> <p>10 Mr. Kabrawala, the government, not only has the</p> <p>11 burden of proving evidence and guilt, but he must prove</p> <p>12 that evidence to you beyond a reasonable doubt -- a very</p> <p>13 high standard that Judge Bianco will instruct you on. He</p> <p>14 will tell you what reasonable doubt is. He will tell you</p> <p>15 the quantum of proof or the quality of proof that you need</p> <p>16 to satisfy yourself of whether that burden has been proven</p> <p>17 or not proven.</p> <p>18 I submit to you that reasonable arguments here</p> <p>19 will create reasonable doubt.</p> <p>20 Also, one of these indispensable important rules</p> <p>21 is that an accused need not testify on his behalf at this</p> <p>22 trial. And that is because he has no burden of proving</p> <p>23 anything. It is his right and his decision not to</p> <p>24 testify. And his failure to testify, or his decision to</p> <p>25 testify or not testify, I should say, should not be held</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>	<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>995</b></p> <p>1 Many of you looked down when you heard this was a child</p> <p>2 pornography case. Many of you looked away and frowned and</p> <p>3 grimaced. You bowed your head.</p> <p>4 I again watched you in this courtroom when those</p> <p>5 videos were shown. And once again your non-verbal cues</p> <p>6 spoke very loudly to me, your gestures, your facial</p> <p>7 expressions, which were very clear. Some of you looked</p> <p>8 away and some of you even started to cry.</p> <p>9 You must please put your emotions aside and</p> <p>10 consider the evidence in this case objectively and fairly.</p> <p>11 Emotions are poison to this process. They will destroy</p> <p>12 and shatter those four important rules that I just briefly</p> <p>13 explained and that Judge Bianco will instruct you on very</p> <p>14 shortly.</p> <p>15 Look at it this way: Be the type of juror that</p> <p>16 you would want on your case if you were charged with a</p> <p>17 serious crime, an emotional crime. Be the type of juror</p> <p>18 that you would want your father to have if he</p> <p>19 unfortunately was charged with a serious offense, or your</p> <p>20 brother, or your son. Be as fair as you possibly can here</p> <p>21 to be objective and not tainted by instincts or emotion.</p> <p>22 Let me now take you through a careful,</p> <p>23 unemotional review of the evidence in this case. Let me</p> <p>24 explain to you why I believe the government has failed to</p> <p>25 meet its burden of proving Mr. Valerio guilty of the</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>

<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>996</b></p> <p>1 crimes that he has been charged with.</p> <p>2 Reasonable doubt follows reasonable arguments.</p> <p>3 We started off the evidence in this case by</p> <p>4 hearing from an Agent Angelini, a very good looking, tall</p> <p>5 agent. He attempted to set a stage for this trial by</p> <p>6 explaining how he came to know Helena Kalichenko.</p> <p>7 However, the stage that he tried to set was not</p> <p>8 set too sturdily. You first learned when you heard of</p> <p>9 Ms. Kalichenko of the number of names that she goes by.</p> <p>10 The name Helena, the name Olena, the name Elaina, and the</p> <p>11 name Helena Bright and Helena Kalichenko.</p> <p>12 All that should be the first red flag to you</p> <p>13 that there is something up with this woman. Because it is</p> <p>14 not common for truthful people, people that don't deceive,</p> <p>15 people that don't take advantage of others, people that</p> <p>16 don't extort others, to use more than one name.</p> <p>17 Aside from her very names, and her picture that</p> <p>18 you were shown by the government, you weren't told of much</p> <p>19 else by Mr. Kabrawala. And that was not on accident.</p> <p>20 They purposely did not tell you much about Olena</p> <p>21 Kalichenko because they wanted to shield her of the type</p> <p>22 of person she really is.</p> <p>23 Let's make no mistake about this person, okay?</p> <p>24 She is vile. She is evil. She is not worthy of any</p> <p>25 credibility.</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>	<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>998</b></p> <p>1 domestic United States service, brighthelena68@gmail.com.</p> <p>2 Besides that, you know nothing else. You know</p> <p>3 nothing else about those two accounts. You know nothing</p> <p>4 else of who she communicated with in those two accounts.</p> <p>5 You know nothing else as far as if or when or how she</p> <p>6 transported child pornography to other people on those</p> <p>7 accounts, to other people that may have been given child</p> <p>8 pornography before she even met Mr. Valerio.</p> <p>9 But we do know something about her. We know her</p> <p>10 goal was to destroy Joseph Valerio.</p> <p>11 Now, Agent Angelini was asked by Mr. Lato on</p> <p>12 cross-examination, what steps did he take in this</p> <p>13 investigation besides meeting with Olena Kalichenko. And</p> <p>14 he plainly, flatly told you, not much more.</p> <p>15 For whatever reason they will have you say that</p> <p>16 it was because Olena Kalichenko was a target, and they had</p> <p>17 plans on arresting her and they didn't want to tip her</p> <p>18 off.</p> <p>19 I will suggest to you something, okay? This is</p> <p>20 not a dumb woman. She may have done dumb things, but she</p> <p>21 is not a dumb woman.</p> <p>22 She knows that walking into the United States</p> <p>23 Embassy in the Ukraine and showing them child pornography</p> <p>24 involving her, she knows she is a target. She knows that</p> <p>25 the United States of America and the Federal Bureau of</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>
<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>997</b></p> <p>1 But during cross-examination the defense pointed</p> <p>2 out a number of things about her, about how cold she is,</p> <p>3 about how calculating she is, how depraved of an</p> <p>4 opportunist and an extortionist she is.</p> <p>5 I'm sure each and every one of you would agree</p> <p>6 with me that Helena Kalichenko, or any of the other names</p> <p>7 that she uses, is certainly not worthy of and not</p> <p>8 deserving of holding the cherished title of mother. As</p> <p>9 such you should be careful in evaluating what she has said</p> <p>10 in emails, why she has said what she said in emails, what</p> <p>11 are her motives for saying what she said, and what are her</p> <p>12 past actions.</p> <p>13 Ladies and gentlemen, she is a scourge on our</p> <p>14 society stemming across the world, from eastern Europe to</p> <p>15 Smithtown, New York, and everywhere else she has been</p> <p>16 in-between. And we will get to where she has been</p> <p>17 in-between.</p> <p>18 Agent Angelini told you that Helena shared with</p> <p>19 you certain emails in a CD, a CD containing child</p> <p>20 pornography, and certain emails exchanged between she and</p> <p>21 the email address joeval5@optonline.net.</p> <p>22 Another red flag for you should have been that</p> <p>23 when she is using two different emails, there is probably</p> <p>24 good reason for it. You know of two mails she used.</p> <p>25 Kalichenkoes@mail.ru, a Russian email service, and a</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>	<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>999</b></p> <p>1 Investigation would want her badly because of what is in</p> <p>2 those videos. But she was hiding under this cloak of</p> <p>3 diplomacy and immunity. And we know that because some of</p> <p>4 the messages that you have heard and seen say that.</p> <p>5 So to say that we didn't want to disturb her</p> <p>6 because we didn't want to tip her off, not good enough for</p> <p>7 me, especially when there came a time that you learned</p> <p>8 that Mr. Lato -- he is over there -- told you that she was</p> <p>9 arrested in July at JFK Airport.</p> <p>10 So for whatever reasons, good, bad, stupid,</p> <p>11 moronic, she made her way here to the United States and</p> <p>12 she was apprehended.</p> <p>13 Where is Helena? Who is Helena?</p> <p>14 Now, what is really important here in terms of</p> <p>15 an investigation -- and he will have you understand and</p> <p>16 believe that this was a really thorough investigation.</p> <p>17 Ladies and gentlemen, this wasn't a thorough</p> <p>18 investigation at all. There were a lot of things here</p> <p>19 that were not done that should have been done. There was</p> <p>20 no evaluation, no attempt being made by reaching the</p> <p>21 authorities in the Ukraine or anywhere else to find out</p> <p>22 about that email account. They know, they know that it</p> <p>23 contained child pornography.</p> <p>24 What else is on that email account? What other</p> <p>25 children are on that email account? When, if there is</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>

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<p style="text-align: right;"><b>1000</b></p> <p>1 other child pornography, was that pornography sent out?</p> <p>2 And if it was previously sent out before she met Joseph</p> <p>3 Valerio, was it the same videos that you saw here in this</p> <p>4 courtroom?</p> <p>5 And I will get to that in a bit because there is</p> <p>6 a lot to say about those videos.</p> <p>7 But you may have been told by comment or</p> <p>8 question about a civil war going on in the United</p> <p>9 States -- in the Ukraine, and maybe that thwarted their</p> <p>10 abilities to do any research or investigation. But they</p> <p>11 know of a second email account that is not impacted by any</p> <p>12 war, that is not impacted by any civil right dispute going</p> <p>13 on in the Ukraine.</p> <p>14 They have a G-mail account that that woman used</p> <p>15 to contact an FBI agent directly. And they didn't even</p> <p>16 bother to issue a judicial subpoena to find out anything</p> <p>17 about that email account, the G-mail account.</p> <p>18 Brighthelena68@gmail.com. It is there for their</p> <p>19 grabbing. It is there for their evaluation, just as</p> <p>20 easily as they found out and issued a subpoena about the</p> <p>21 Cablevision email account, they could have done so that</p> <p>22 easily with a G-mail account.</p> <p>23 God knows what is on that G-mail account. I</p> <p>24 hope it doesn't have other child victims of pornography.</p> <p>25 I hope.</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>	<p style="text-align: right;"><b>1002</b></p> <p>1 What else is there about child pornography?</p> <p>2 Because as I will get to in a second, there is not one</p> <p>3 bit, not one bit of forensic evidence in this case for you</p> <p>4 to come to the conclusion that those horrible videos that</p> <p>5 you saw here were produced as a result of the emails that</p> <p>6 were sent to her from an optonline account.</p> <p>7 They didn't search anything, her property, her</p> <p>8 electronic devices, any cameras that she had, any cell</p> <p>9 phones that she had, any computers that she had.</p> <p>10 Now that you have heard the evidence in this</p> <p>11 case -- and by virtue of two expert witnesses that you</p> <p>12 have seen up there, computer forensic witnesses, you know</p> <p>13 what metadata is. And you know how powerful the evidence</p> <p>14 is that involves metadata. Okay?</p> <p>15 There are things that touch on the reliability</p> <p>16 of the metadata, and I will get to that later. But</p> <p>17 metadata is a tremendous resource for a child pornography</p> <p>18 investigator. Because the metadata on any kind of</p> <p>19 electronic device would show when that video was recorded,</p> <p>20 the month, the day, the time, the year. Because as you</p> <p>21 saw, unfortunately, on those videos, there is nothing on</p> <p>22 those videos when you watch them to know when they were</p> <p>23 recorded, nothing.</p> <p>24 We know -- I'm not a big computer guy, but I</p> <p>25 recorded events in my child's life, her birthday, her</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>
<p style="text-align: right;"><b>1001</b></p> <p>1 So I'm telling you, and use your common sense.</p> <p>2 If he tells you in rebuttal how thorough this</p> <p>3 investigation is, the FBI has done a disservice to</p> <p>4 everybody involved in this case, to children, to</p> <p>5 prosecutors and the defense. Because there may have been</p> <p>6 great mitigating evidence that would be relevant in this</p> <p>7 case, evidence that would prove maybe that those videos</p> <p>8 were not produced by these various emails that have been</p> <p>9 brought to your attention. There may be exculpatory</p> <p>10 evidence, evidence tending to prove innocence on that</p> <p>11 RU email from Russia, or that G-mail account in the United</p> <p>12 States.</p> <p>13 Not only was there nothing done regarding the</p> <p>14 email accounts, but for whatever reason after she was</p> <p>15 arrested there was no search done of her homes, wherever</p> <p>16 she lives. God knows where she lives.</p> <p>17 They had her sitting inside the FBI office in</p> <p>18 the United States Embassy in the Ukraine, and they didn't</p> <p>19 find out where she lived, who she lived with. They didn't</p> <p>20 conduct any search of any of her premises, abode,</p> <p>21 apartment house, wherever the hell she lives. Who knows</p> <p>22 what evidence is in those areas, those houses, whatever</p> <p>23 they are? She has to live somewhere.</p> <p>24 Are there other CDs, videos, flash cards, flash</p> <p>25 disks, whatever it may be?</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>	<p style="text-align: right;"><b>1003</b></p> <p>1 sweet 16, and there are oftentimes a date on there, a time</p> <p>2 stamp or something to indicate when it was made if you</p> <p>3 program it correctly and if you don't change it.</p> <p>4 There is nothing here.</p> <p>5 These videos are rather inconclusive.</p> <p>6 Do they show child pornography? Absolutely.</p> <p>7 Horrible child pornography.</p> <p>8 But let's look at those videos, not physically</p> <p>9 but how they were sent, where they were sent and what</p> <p>10 could we try to extrapolate from those videos that was not</p> <p>11 extrapolated from -- with those tremendous resources that</p> <p>12 they have that they didn't look into.</p> <p>13 The email was sent through attachments. And as</p> <p>14 you know from your personal experience with computers, and</p> <p>15 if not, from the two experts, that when an email is</p> <p>16 attached -- sent with attachments, there is an IP address</p> <p>17 and a whole slew of other things, letters, dashes, dots.</p> <p>18 But the attachments does not mean that it is made, created</p> <p>19 the same day that the email is sent.</p> <p>20 To the contrary, Detective Forrestal was asked</p> <p>21 the very question, and he answered, we don't know when an</p> <p>22 attachment was made, whether a document attachment or a</p> <p>23 video attachment. You could attach a video that was made</p> <p>24 a year ago, a day ago, two years ago, two days ago, three</p> <p>25 years ago, and so on. There is not one bit of proof in</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>



<p style="text-align: center;">Summation/LaPinta</p> <p style="text-align: right;">1004</p> <p>1 this case to prove electronically, metadata-wise</p> <p>2 testimonial, any other way, that those emails -- videos</p> <p>3 were produced upon the request of those emails sent to</p> <p>4 her.</p> <p>5 Now, if you saw the videos, or listened to them,</p> <p>6 there was sound on those videos. The sound was nothing</p> <p>7 that is of substantive evidentiary value. Baby talk, for</p> <p>8 lack of a better expression, is what you heard. But you</p> <p>9 didn't hear, Joe, wave to Joe, [REDACTED]. Joe, I hope you</p> <p>10 like this. This is for you.</p> <p>11 Nothing on the sound of those videos indicate</p> <p>12 that those videos were made for that joeval5@optonline.net</p> <p>13 account, and those emails from joeval5@optonline.net.</p> <p>14 The substance, however painful it was for me to</p> <p>15 ask, I did -- but the substance of those videos as you</p> <p>16 know from Detective Forrestal were common types of child</p> <p>17 pornography that unfortunately is made throughout our</p> <p>18 world. It is child pornography involving oral sex, child</p> <p>19 pornography filmed in showers, child pornography using</p> <p>20 objects. But if you reflect back on all of these emails</p> <p>21 that you have seen, I remember one object in particular</p> <p>22 that was used. And I don't think I will ever forget it,</p> <p>23 and you will not either. A toothbrush.</p> <p>24 Did any of these emails ask for a toothbrush to</p> <p>25 be used?</p> <p style="text-align: right;">HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</p> <p style="text-align: right;">Official Court Reporter</p>	<p style="text-align: center;">Summation/LaPinta</p> <p style="text-align: right;">1006</p> <p>1 that Agent Angelini would gain access to that Viber</p> <p>2 account.</p> <p>3 So I'm told that we are up to the lunch hour,</p> <p>4 and I will leave you with a thought until after lunch.</p> <p>5 When we deal with evidence in criminal trials,</p> <p>6 when we hear prosecutors presenting evidence and arguing</p> <p>7 to you, and you hear of lawyers that are attacking the</p> <p>8 quality of evidence, it doesn't require any advanced</p> <p>9 degrees. It doesn't require any type of computer degrees,</p> <p>10 or even significant unique life experiences. It requires</p> <p>11 you to use the common sense that you have used in your</p> <p>12 jobs as teachers, in your jobs as nurses, in your jobs of</p> <p>13 construction and so forth.</p> <p>14 So I'm not asking you to employ hypertechnical</p> <p>15 analysis of this evidence, or to hyper-evaluate what I'm</p> <p>16 saying. Use your common sense.</p> <p>17 And when I continue after lunch, I will draw</p> <p>18 more attention to a lot of other things in the</p> <p>19 prosecution's case that are very worthy of your</p> <p>20 consideration.</p> <p>21 Just remember that reasonable arguments create</p> <p>22 reasonable doubt.</p> <p>23 Thank you. I will be back.</p> <p>24 THE COURT: Members of the jury, we are going to</p> <p>25 take the lunch break. We will reconvene at 2:00 o'clock.</p> <p style="text-align: right;">HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</p> <p style="text-align: right;">Official Court Reporter</p>
<p style="text-align: center;">Summation/LaPinta</p> <p style="text-align: right;">1005</p> <p>1 I believe -- I believe, and I could be wrong --</p> <p>2 that another, or maybe more than one email was using a</p> <p>3 hairbrush, or the handle of a hairbrush. You decide what</p> <p>4 it is if you remember. None of these emails asked for a</p> <p>5 hairbrush (sic) to be used. It is common child</p> <p>6 pornography to be filmed in showers, as I said before.</p> <p>7 But some of the emails requested certain locations. Film</p> <p>8 child pornography in a public bathroom, in a public place.</p> <p>9 Did you see any videos about any public places</p> <p>10 here?</p> <p>11 Did you see any emails with attachments that</p> <p>12 said, Joe, attached please find a pornography video of me</p> <p>13 and [REDACTED] my daughter, that we made for you?</p> <p>14 There is one text, the Viber text, that is done</p> <p>15 months and months later, when she is now targeting Joe and</p> <p>16 extorting him and threatening him and asking him to</p> <p>17 negotiate, that makes reference to videos she produced.</p> <p>18 But at that stage of the game, ladies and gentlemen, she</p> <p>19 has made a determination that she is going to the</p> <p>20 authorities. And she wants Mr. Valerio arrested. She</p> <p>21 wants him prosecuted. So she is going to do everything in</p> <p>22 her power to achieve that. And the language that was used</p> <p>23 on that Viber message which she references -- where she</p> <p>24 references emails and videos of her and [REDACTED] which she</p> <p>25 made was designed to incriminate him. Because she knew</p> <p style="text-align: right;">HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</p> <p style="text-align: right;">Official Court Reporter</p>	<p style="text-align: center;">Summation/LaPinta</p> <p style="text-align: right;">1007</p> <p>1 You can't discuss the case yet and I will see</p> <p>2 you at 2:00 o'clock.</p> <p>3 (Whereupon, at this time the jury leaves the</p> <p>4 courtroom.)</p> <p>5 (Luncheon Recess.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</p> <p style="text-align: right;">Official Court Reporter</p>

Summation/LaPinta 1008	Summation/LaPinta 1010
<p>1 AFTERNOON SESSION</p> <p>2</p> <p>3 THE COURT: Mr. LaPinta, are you ready?</p> <p>4 MR. LaPINTA: Yes, your Honor.</p> <p>5 THE COURT: And is Mr. Lato outside?</p> <p>6 MR. LaPINTA: I will get him, your Honor.</p> <p>7 THE COURT: All right.</p> <p>8 How much more do you have?</p> <p>9 MR. LaPINTA: 20, 25 minutes.</p> <p>10 THE COURT: And then we will have the rebuttal.</p> <p>11 MR. KABRAWALA: Yes.</p> <p>12 THE COURT: All right.</p> <p>13 Get the jury.</p> <p>14 (Whereupon, the jury at this time entered the</p> <p>15 courtroom.)</p> <p>16 THE COURT: Everyone, please be seated.</p> <p>17 Members of the jury, we will now continue with</p> <p>18 the defense summation by counsel for the defense.</p> <p>19 Mr. LaPinta.</p> <p>20 MR. LaPINTA: Thank you, your Honor.</p> <p>21 Welcome back.</p> <p>22 The good thing about taking a break is that you</p> <p>23 get to take a break and eat lunch.</p> <p>24 The bad thing about taking a break and eating</p> <p>25 lunch is after lunch you kind of get a little drowsy and a</p> <p>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</p> <p>Official Court Reporter</p>	<p>1 Kalichenko to get money.</p> <p>2 Whereas you have seen emails from those two</p> <p>3 accounts that maybe describe Olena as a poverty stricken</p> <p>4 young woman, this is a woman who is actually traveling</p> <p>5 around the world. You heard countries like France,</p> <p>6 Turkey, Ukraine, the United States, who is going back and</p> <p>7 forth -- I will touch on it in a bit regarding the</p> <p>8 itinerary that we know she has traveled. This is a woman</p> <p>9 who is getting money from somewhere. And it is not just</p> <p>10 from this situation. It is elsewhere as well.</p> <p>11 This is, in my opinion, a small little piece to</p> <p>12 what Olena Kalichenko or Helena Kalichenko or Elaina</p> <p>13 Kalichenko or Helena Bright is all about.</p> <p>14 So let there be no mistake that she is an</p> <p>15 extortionist here, and her goal was to destroy Joseph</p> <p>16 Valerio. Look at the Viber messages that prove that. And</p> <p>17 also keep in mind, as I said before, that when she makes</p> <p>18 reference to videos she has produced, she is well aware --</p> <p>19 well aware because it is at the same time that she is</p> <p>20 communicating with Agent Angelini in the Federal Bureau of</p> <p>21 Investigation.</p> <p>22 Let's switch focus here, and let's talk about</p> <p>23 the tower computer in the upstairs office of the High Gate</p> <p>24 premises, the tower computer that was the focus of</p> <p>25 forensic evaluation by both Detective Forrestal and also</p> <p>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</p> <p>Official Court Reporter</p>
Summation/LaPinta 1009	Summation/LaPinta 1011
<p>1 little tired and what-not. So try to keep as attentive as</p> <p>2 we possibly can here, because I will get into some other</p> <p>3 very, very critical evidence, and also to further my</p> <p>4 argument to you that this investigation was drastically</p> <p>5 inadequate and did not -- did not uncover facts that would</p> <p>6 be very relevant here to your consideration.</p> <p>7 I left off before lunch discussing the Viber</p> <p>8 account.</p> <p>9 You know that Viber -- one of the agents, and I</p> <p>10 think it was Agent Forrestal -- said that it is a common</p> <p>11 text methodology of communicating overseas.</p> <p>12 In fact, there were text messages used on Viber</p> <p>13 from those two particular email accounts and phone numbers</p> <p>14 involved in this case.</p> <p>15 As I brought out on cross-examination of</p> <p>16 Detective Forrestal, it is clear and unequivocal, without</p> <p>17 any question, that those Viber text messages were an</p> <p>18 attempt to extort Mr. Valerio.</p> <p>19 Let's have no questions about this. When you</p> <p>20 use the word "negotiate" and you threaten to contact the</p> <p>21 FBI and the authorities -- if you don't negotiate, that is</p> <p>22 extortion. An extortion is trying to get something from</p> <p>23 somebody.</p> <p>24 Here my argument to you is that that something</p> <p>25 is money. Because all this going on is for Olena</p> <p>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</p> <p>Official Court Reporter</p>	<p>1 from our expert, Mr. Gibbs.</p> <p>2 Now, typically when you have a criminal case</p> <p>3 with experts from both sides, you usually have a battle of</p> <p>4 the experts. And here it is quite a unique situation,</p> <p>5 because for the most part both experts agree on the same</p> <p>6 thing.</p> <p>7 Mr. Kabrawala will have you believe that because</p> <p>8 Mr. Gibbs has agreed to certain questions that he has</p> <p>9 asked, that this is a slam dunk case for him. Okay?</p> <p>10 Let me say this clearly and loudly, it is not.</p> <p>11 And now I will tell you why.</p> <p>12 Merely because videos are located in someone's</p> <p>13 inbox in their operating system does not mean that those</p> <p>14 videos were accessed or viewed. Okay?</p> <p>15 Because it merely indicates that they were sent</p> <p>16 to an email address. So I leave to you this argument:</p> <p>17 There is no proof in this case, either electronically,</p> <p>18 forensically, forensic computer-wise or otherwise, that</p> <p>19 these videos were actually viewed, seen, by Mr. Valerio.</p> <p>20 Nowhere do you have any forensic proof of that. Not on</p> <p>21 that computer and not on any of the other 13 devices that</p> <p>22 they seized from that Smithtown residence.</p> <p>23 Now, as I brought out on cross-examination, when</p> <p>24 they executed the search warrant of that house, they were</p> <p>25 on that premises. Because that was one of hundreds of</p> <p>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</p> <p>Official Court Reporter</p>

Summation/LaPinta

1012

1 search warrants that Detective Forrestal was involved in.  
 2 And to his -- to his word, he left no rock unturned, no  
 3 stone unturned. I asked him that question.  
 4 There were no other electronic devices in that  
 5 house. They got everything that was there. And none of  
 6 those electronic devices show that those videos were  
 7 opened or viewed.  
 8 Now, if you think back closely to his direct  
 9 examination, questions that Mr. Kabrawala asked him, he  
 10 didn't tell you that. He just said that the emails were  
 11 on the computer -- the videos were on the computer. Okay?  
 12 And I suggest to you that that is misleading.  
 13 Because it wasn't until I asked him the pointed questions  
 14 on cross-examination that he then told you that, right, it  
 15 doesn't mean that they were opened. It doesn't mean that  
 16 they were viewed on that computer.  
 17 So I suggest to you that the testimony that you  
 18 heard from Detective Forrestal is not exactly thorough,  
 19 complete and open regarding facts that hurt their case.  
 20 The fact that they are in the inbox is only a small, small  
 21 piece of what this case is about.  
 22 In fact, all of the emails that are involved in  
 23 this case from that joeval5@optonline.net account, is a  
 24 small piece to this case. Okay? It is one dimension to  
 25 this case. And the other dimensions have to do with -- as

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1013

1 I mentioned before -- the effect that the emails that were  
 2 sent from the optonline account had on Olena, and whether  
 3 the videos you saw here were produced by virtue of the  
 4 request on those emails.  
 5 Now, let me speak to you about that optonline  
 6 account and those emails. Okay?  
 7 I'm not condoning those emails. I'm not asking  
 8 you to condone those emails, okay? Those are troubling  
 9 emails.  
 10 Now, I don't know why, or I don't know the  
 11 reason. Perhaps it is some kind of misguided chivalry of  
 12 some sort. I don't know. I'm not a therapist. But in  
 13 terms of evidentiary value, it is only a small piece.  
 14 Because you have to decide, ladies and gentlemen, whether  
 15 all those emails produced those videos. That is the key  
 16 to that one exploitation charge involving Helena and  
 17 [REDACTED].  
 18 Let's talk about [REDACTED] for a second, okay?  
 19 I don't know if that is [REDACTED] in the video.  
 20 Nobody knows that that is [REDACTED] in the video. Certainly  
 21 the name was referenced as [REDACTED]  
 22 I don't know if it is Olena Kalichenko's  
 23 daughter or not.  
 24 You may feel it is not relevant if it is her  
 25 daughter or not.

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1 I certainly agree that it is a young child,  
 2 obviously. But nobody has seen that child.  
 3 You may ask why is it relevant that no one has  
 4 seen this child? And I will answer it.  
 5 Because we don't know how old [REDACTED] is now.  
 6 [REDACTED] for all we know could be six, seven or eight years  
 7 old. I don't know. Because if somebody saw her when  
 8 Helena came forward, and the dating of the emails reflect  
 9 that those videos were sent maybe nine months, twelve  
 10 months, a year, a year and three months beforehand, then  
 11 maybe that child would be three and a half at the time.  
 12 But we don't know that. And that is really important  
 13 here. Because we don't know that, we don't know that  
 14 those videos were made when they were sent, or as a  
 15 product of when they were sent, or upon the emails being  
 16 received from Olena Kalichenko.  
 17 We don't know the age of this child right now,  
 18 because there was no investigation of that child. That  
 19 child is someplace in the Ukraine, I would think. And  
 20 even though Agent Angelini was here to testify, I assure  
 21 you that there is a legion of other FBI agents in the  
 22 Ukraine that could find that child and find out if she is  
 23 four years old, or around that age. Because if she is --  
 24 or three and a half. Because if she is, that certainly --  
 25 certainly that would strengthen their case quite a bit.

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1 But if she is not, well -- if she is two now or two and a  
 2 half, or six or seven, guess what, that is not the child,  
 3 it is not the child. We don't know. That is the point  
 4 here, we don't know.  
 5 Well, we should know, because it involves a  
 6 child, even though the child was in the Ukraine. That  
 7 child was victimized. This investigation deserved for  
 8 that child to be approached by the FBI and investigated  
 9 more thoroughly.  
 10 So there are doubts about this child. And I  
 11 hope that this child is in a safe place right now. I  
 12 don't know.  
 13 Now, when we speak of those videos, and I will  
 14 not repeat myself because I think you heard me loud and  
 15 clearly, please think back when you deliberate, think back  
 16 of the items I asked you to pay particular attention to.  
 17 And more importantly, the items of information that we  
 18 don't know about those videos.  
 19 Let's talk about the images involving young  
 20 [REDACTED].  
 21 Obviously, the images are of [REDACTED], no doubt.  
 22 Obviously, the images were recorded of [REDACTED] in  
 23 that Smithtown residence, clearly.  
 24 However, not clear is when those videos were  
 25 made. Because that Samsung camcorder, the focus of the

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1 [REDACTED] photographs, there is great doubt about the  
 2 reliability of those time stamps on the metadata.  
 3 Regardless of what Forrestal thinks they are  
 4 about the reliability, he can't tell you, nor could  
 5 anybody, not even my expert, whether the date/time stamp  
 6 programmed on that Samsung camcorder was an accurate  
 7 date/time stamp when it was recorded. That is the key.  
 8 Okay? We don't know.  
 9 Because if it wasn't accurate, if it was off a  
 10 few months or a few years, whatever it is, then that time  
 11 stamp is worthless to us. And because nobody has the  
 12 ability to know what that time stamp was when that  
 13 recording was made, we are never going to know whether  
 14 that time stamp is accurate or not. But the metadata  
 15 revealed two dates, September 10th, 2010, at 3:39 to  
 16 3:42 p.m.  
 17 But what we do know is that those times are not  
 18 even accurate. Because Detective Forrestal on  
 19 cross-examination, and he didn't ask him on direct because  
 20 he didn't want to bring out the fact that the time was  
 21 wrong. I brought that out to you on cross-examination.  
 22 Because in fact, ladies and gentlemen, the time stamp was  
 23 wrong. It was wrong and off for an hour and 12 minutes.  
 24 So why then can't it be that maybe the date was  
 25 off as well, or the year was off as well? I don't know.

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1 And it is for both dates, for the September 10, 2010 date  
 2 and the January 19, 2011 date.  
 3 The computer experts agreed. However, Forrestal  
 4 says, very reliable.  
 5 My expert says, I don't know if it's reliable.  
 6 And because I have uncertainty about it, it can't be  
 7 reliable because I don't know what it was programmed when  
 8 it was recorded.  
 9 Now, the significance of all this is that we  
 10 know, again undisputed, that Olena Kalichenko has been  
 11 here in the United States. In fact, we know -- excuse  
 12 me -- that not only has she flown to the United States,  
 13 but she had flown to Germany, Turkey, France. And within  
 14 the United States we know she has flown to JFK, Texas and  
 15 Cincinnati. The poverty stricken Olena Kalichenko is  
 16 flying around the world.  
 17 And their witness, Agent Deep Chopra told you  
 18 that. He told you that he knows from the itinerary, the  
 19 records of the Office of Custom and Border Patrol, that  
 20 she arrived in the United States September 5, 2011 and  
 21 stayed until December 2, 2011.  
 22 He also knows that she arrived again  
 23 February 23, 2011 -- excuse me, February 23, 2010 and left  
 24 March 14th, 2010, where Cincinnati, Ohio was involved.  
 25 And once again she arrived on June 4th, 2011 and left on

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1018

1 July 7th, 2011, when she flew into Fort Worth, Texas  
 2 airport. We know she has been back and forth here.  
 3 But what is really troubling here, really  
 4 troubling is that our United States Custom and Border  
 5 Department could not account for her trip when she arrived  
 6 here. Because there is no arrival date that corresponds  
 7 with a departure date that they know about.  
 8 The testimony of Mr. Chopra is available for you  
 9 to review. It is clear. It is there, and it is  
 10 unquestioned.  
 11 Now, why am I so troubled about the Border and  
 12 Custom Patrol not having the ability to account for her  
 13 travels? Because in our post 9/11 era, that is a problem.  
 14 It is a big problem. And it is especially a big problem  
 15 when you are dealing with a woman who is traveling a lot  
 16 around this world that is involved in child pornography.  
 17 So what you are dealing with here, ladies and  
 18 gentlemen, regarding the itinerary, the flights in and out  
 19 of this country, they are not just red flags that the FBI  
 20 should have picked up. But they are red flags that are  
 21 slapping them in the face. Something is up here. This  
 22 woman is evading Customs and Border Patrol when she  
 23 travels. It is actually shocking, shocking, that there is  
 24 an incomplete record of her travels in and out of this  
 25 country.

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1 Both Frances Valerio, Joseph's mother, and  
 2 Bernadette Valerio, who testified here, and they both told  
 3 you that they support him, even when he is facing such  
 4 horrible charges involving their own flesh and blood.  
 5 I don't know, but we all have family members who  
 6 have different levels of acceptance and forgiveness, we  
 7 all do. I have relatives who will stand by each other  
 8 through thick and thin, right or wrong, good and bad.  
 9 I have other relatives, if you do something  
 10 wrong, you are on your own. You suffer the consequences.  
 11 So it is for you to decide whether those two  
 12 young -- well, two ladies -- were lying to you or not.  
 13 Okay?  
 14 I suggest to you that if they were lying, they  
 15 could have lied a lot better because Bernadette was very  
 16 honest in telling you she couldn't tell you the dates she  
 17 saw Olena Kalichenko at the Smithtown residence, nor could  
 18 the mother, Frances.  
 19 So if this was a script to protect their beloved  
 20 Joseph, son and brother, you would have gotten a lot more  
 21 detail out of these two people. They would have given you  
 22 complete exculpatory alibis.  
 23 But because they were honest, it is clear proof  
 24 to you that the information they gave you was genuine and  
 25 truthful.

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<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>1020</b></p> <p>1 Now, they saw her at that house. They saw her</p> <p>2 in that basement. They saw her when she was present, as</p> <p>3 they were, when [REDACTED] was being videotaped for modeling</p> <p>4 purposes. Okay?</p> <p>5 Now, I'm not someone to judge, and you shouldn't</p> <p>6 be, whether it is a good idea or a bad idea for a young</p> <p>7 child to be in a modeling situation. I don't know. But</p> <p>8 they knew of it. It wasn't a secret thing. And they were</p> <p>9 actually present when she was being recorded.</p> <p>10 In fact, as you know from today's testimony from</p> <p>11 Frances, that they were successful in actually publishing</p> <p>12 one of the model photographs of some sort, in a costume, I</p> <p>13 think she said, a Halloween costume of some sort.</p> <p>14 So I suggest to you that their testimony is</p> <p>15 truthful. And Olena Kalichenko did in fact stay at that</p> <p>16 Smithtown residence. Because look at Deep Chopra, his</p> <p>17 testimony again. Because the Customs and Border paperwork</p> <p>18 states that she is living there at that Smithtown address.</p> <p>19 She had a means and opportunity to film young</p> <p>20 [REDACTED] in the nude when the rest of that family went</p> <p>21 upstairs and grabbed dinner or lunch, or whatever meal</p> <p>22 they were having. And she stayed behind.</p> <p>23 Now, we know if you want to give credence to</p> <p>24 this time stamp of some sort, we know that these time</p> <p>25 stamps didn't take place over hours and hours of time.</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>	<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>1022</b></p> <p>1 your home, seclude you in a dining room, seclude your</p> <p>2 significant other, boyfriend, girlfriend, mother, father,</p> <p>3 whatever, come searching your house.</p> <p>4 As Mr. Lato pointed out in his cross-examination</p> <p>5 of Agent Troyd, there is a reason why they do it at</p> <p>6 6:00 a.m. Because of the element of surprise and shock.</p> <p>7 Okay?</p> <p>8 So continue to picture that you are now seated</p> <p>9 in a dining room of your home, and in front of you is a</p> <p>10 long dining room table, and unless you jump on it and get</p> <p>11 away, you are not getting past it.</p> <p>12 To the right of you is a law enforcement</p> <p>13 officer. To the left of you is a law enforcement officer,</p> <p>14 and there are at least one or two others at that table.</p> <p>15 There are others in other rooms of that house.</p> <p>16 Agent Troyd said that there was someone in the</p> <p>17 kitchen as well, as well as someone that was dealing with</p> <p>18 Mr. Valerio's girlfriend, Jarmila, at the same time.</p> <p>19 That is not a cozy setting. That is high</p> <p>20 stress. You are scared. You are worried. You are</p> <p>21 shocked. You are surprised.</p> <p>22 So you say those statements are a product of</p> <p>23 free will or a product of perhaps a coercive type of</p> <p>24 environment.</p> <p>25 There is a second set of statements that are</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>
<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>1021</b></p> <p>1 They were actually a very short period of time when the</p> <p>2 snippets of those videos were discovered. Which is</p> <p>3 consistent with the approximate timeframe that Frances</p> <p>4 told you that that woman was downstairs in the basement</p> <p>5 alone with that child.</p> <p>6 Reasonable arguments create reasonable doubt,</p> <p>7 ladies and gentlemen.</p> <p>8 One other thing about [REDACTED]. Where is [REDACTED] a?</p> <p>9 Okay?</p> <p>10 Nobody, nobody would like for a young girl to be</p> <p>11 involved in a trial for obvious reasons. And to be</p> <p>12 honest, I'm quite glad she wasn't involved. But if [REDACTED]</p> <p>13 has told people and the FBI that her uncle videotaped her</p> <p>14 in the nude, perhaps that child would have been here to</p> <p>15 tell you that. She is not here. Think about it.</p> <p>16 Let's talk about the statements that the</p> <p>17 government attributes, or the confessions that</p> <p>18 Mr. Kabrawala has alluded to in the closing arguments.</p> <p>19 And for you to have an understanding of the worthiness and</p> <p>20 reliability from those statements, put yourself in this</p> <p>21 situation:</p> <p>22 You are sleeping at your home at 6:00 a.m. in</p> <p>23 the morning, on a winter's morning, and unexpectedly five</p> <p>24 to seven federal agents of the FBI and at least one</p> <p>25 Suffolk County detective, wearing raid jackets, come into</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>	<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>1023</b></p> <p>1 being offered for your consideration, statements that were</p> <p>2 told to Agent Troyd, the processing -- at the processing</p> <p>3 of Mr. Valerio the second time after they discovered the</p> <p>4 [REDACTED] images on the metadata of the camera card. And</p> <p>5 those statements have something to do, to the effect that</p> <p>6 I lost my family and I want to kill myself.</p> <p>7 Well, guess what. Picture being arrested and</p> <p>8 for photographing a young child in your family. Picture</p> <p>9 the mere effect of being arrested on your family. Let's</p> <p>10 just assume that you are wrongfully arrested. That is for</p> <p>11 you to decide when you deliberate on this case. And just</p> <p>12 assume you are wrongfully arrested.</p> <p>13 Is it that outrageous for your emotional impact</p> <p>14 when you are told to say, oh, my God, what is my family</p> <p>15 going to think of me? I'm going to lose my family.</p> <p>16 How upsetting is it to you if it is a young</p> <p>17 [REDACTED] of yours.</p> <p>18 The mere fact that you are being charged in</p> <p>19 federal court for exploitation charges involving your</p> <p>20 [REDACTED], I suggest to you would have somebody consider</p> <p>21 killing themselves, even if they are innocent of those</p> <p>22 charges. You gauge the reliability of those statements.</p> <p>23 You gauge the consciousness of guilt that he is going to</p> <p>24 argue to you is apparent from those statements.</p> <p>25 I suggest that there is little value to those</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>

<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>1024</b></p> <p>1 statements.</p> <p>2 There are two waiver of rights forms. Okay?</p> <p>3 Because our laws -- a side issue in this case</p> <p>4 regarding the correct procedures or not that were used to</p> <p>5 give those rights. But you have the forms involved in</p> <p>6 this case.</p> <p>7 Both of those forms are missing times. Okay?</p> <p>8 You may say, you know what, LaPinta, he is a</p> <p>9 little crazy. He is kind of nutty when it comes to times</p> <p>10 and numbers people write down. And Forrestal miswrote a</p> <p>11 file number and he misstated the military time. He is</p> <p>12 kind of nuts. He is looking to trick us.</p> <p>13 Well, I'm not looking to trick anybody. Because</p> <p>14 I will tell you something.</p> <p>15 When you are in a federal courthouse, facing</p> <p>16 exploitation of a child, you better make sure if you are</p> <p>17 an investigator that the time you are writing down on the</p> <p>18 report, the file you are putting down on the report is</p> <p>19 accurately written, because if it is not accurate it could</p> <p>20 be a different file.</p> <p>21 So don't tell me, Detective Forrestal, it is a</p> <p>22 typo, it is a mistake. There is little room for a mistake</p> <p>23 here when someone is fighting for their innocence.</p> <p>24 You may say, who cares if that rights card or</p> <p>25 rights statement is missing dates.</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>	<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>1026</b></p> <p>1 part of? What is this woman? What is this mentor?</p> <p>2 Is Olena Kalichenko, with all her aliases,</p> <p>3 flying across the world, part of a bigger child</p> <p>4 pornography ring? I don't know. Because if she is, there</p> <p>5 is great reason to believe that there is a lot of other</p> <p>6 videos involved here. And maybe these videos were used on</p> <p>7 numerous other occasions and sent to other unwitting or</p> <p>8 waiting men. Because, ladies and gentlemen, we know about</p> <p>9 at least one other witting or unwitting man she sent child</p> <p>10 pornography to, and his name is Daniel Ditmeyer. And</p> <p>11 Agent Troyd was asked particular questions about Daniel</p> <p>12 Ditmeyer in his investigation. He knew the name Daniel</p> <p>13 Ditmeyer. And he had reason to know that quite possibly</p> <p>14 child pornography was sent to him. Okay?</p> <p>15 I didn't make this up. It is in the record.</p> <p>16 So wouldn't you think that a thorough</p> <p>17 investigation involving child pornography would lend a</p> <p>18 team of experienced agents to investigate a Daniel</p> <p>19 Ditmeyer?</p> <p>20 They have a reservoir of resources available to</p> <p>21 them. They can find out anything about anybody in this</p> <p>22 world.</p> <p>23 We don't know a thing about Daniel Ditmeyer. We</p> <p>24 don't know about any emails of Daniel Ditmeyer. We don't</p> <p>25 know of any social media of Daniel Ditmeyer. And we don't</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>
<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>1025</b></p> <p>1 Well, you should care because it comes down to</p> <p>2 when those rights are given to him. And these rights are</p> <p>3 gold for people being accused. They are not coincidental</p> <p>4 rights. They are rights that are grounded in our</p> <p>5 Constitution as citizens and members of our society.</p> <p>6 I'm not picking on little ridiculous issues</p> <p>7 here. Please understand that. But you decide how</p> <p>8 important or unimportant they are.</p> <p>9 Now, in the numerous, numerous emails that were</p> <p>10 sent between those two accounts, joeval5@optonline.net and</p> <p>11 kalichenkoes@mail.ru, there are other emails that address</p> <p>12 other things that are terribly relevant here that he</p> <p>13 hasn't told you about. And maybe he is waiting for me to</p> <p>14 tell you about it for him to sum up when he gets back here</p> <p>15 again. But as of right now he hasn't mentioned this to</p> <p>16 you.</p> <p>17 Ready?</p> <p>18 There is language in this record from emails</p> <p>19 that Helena has a mentor that she has been dealing with, a</p> <p>20 woman. Because the mentor is written in the emails.</p> <p>21 Okay?</p> <p>22 Now, I don't know who this mentor is. One of</p> <p>23 the emails states a name. But when someone is dealing,</p> <p>24 undoubtedly, and filming graphic child pornography, and</p> <p>25 she states that she has a mentor, what is this woman a</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>	<p style="text-align: center;"><b>Summation/LaPinta</b></p> <p style="text-align: right;"><b>1027</b></p> <p>1 know if he was ever even reached.</p> <p>2 Was Daniel Ditmeyer sent these very videos that</p> <p>3 are part of this case?</p> <p>4 And more relevant to that question, when, if</p> <p>5 those videos were sent, were they sent? Were they sent</p> <p>6 prior to joeval5@optonline.net being involved with Olena</p> <p>7 Kalichenko? Because if they were, guess what. This is</p> <p>8 not a production of child pornography case. Because in a</p> <p>9 second I will go over the element -- and there is one that</p> <p>10 you really should focus on -- that is the linchpin to this</p> <p>11 exploitation charge that he is facing regarding Olena</p> <p>12 Kalichenko and [REDACTED].</p> <p>13 Thoroughly -- I agree that this investigation</p> <p>14 was thorough. It was thoroughly incomplete. Red flags</p> <p>15 galore.</p> <p>16 Let me speak about the charges that Mr. Valerio</p> <p>17 is facing. I'm not going to go through all the elements,</p> <p>18 because it is only a handful of them that really apply to</p> <p>19 the evidence and the arguments that I'm making. Okay? I</p> <p>20 will just address the ones I'm talking about. The</p> <p>21 evidence I'm talking about.</p> <p>22 A necessary element of both exploitation of a</p> <p>23 child charge here -- and there are two. One involving</p> <p>24 [REDACTED]. One involving [REDACTED]</p> <p>25 It is the fact that Mr. Valerio was involved in</p> <p style="text-align: right;"><i>HARRY RAPAPORT, CERTIFIED REALTIME REPORTER</i> <i>Official Court Reporter</i></p>

Summation/LaPinta

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1 the production, the production of child pornography.  
2 If you have reasonable doubt as to when those  
3 horrible videos were made of [REDACTED], then you don't have  
4 proof beyond a reasonable doubt regarding the production  
5 of those videos.

6 The second exploitation of a child count  
7 involves the videotaping of [REDACTED]

8 If there is a question as to when those videos  
9 were made, then you have in your opinion some worthy  
10 testimony as to somebody else having an opportunity to  
11 film [REDACTED]. Then there is doubt about whether those  
12 images were filmed by Mr. Valerio or by Olena Kalichenko.  
13 She was there. No question she was at that house.

14 You determine if they satisfied their burden of  
15 proving that beyond a reasonable doubt, or whether it is  
16 reasonable to conclude that this horrible woman did that  
17 to [REDACTED] as well.

18 Reasonable arguments create reasonable doubt.

19 Regarding the distribution and possession  
20 counts, consider that the computer in question at the  
21 office was not -- did not and was not used to show the  
22 videos. In other words, there is no proof in this record,  
23 electronically or otherwise, by device or hard proof, that  
24 those videos were even watched by Mr. Valerio. Consider  
25 that issue when you decide on the distribution and

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1 possession counts that are involved in this indictment.

2 And when you consider the various attempt  
3 charges, two words are going to be very relevant in that  
4 statute. Whether the acts of Mr. Valerio in requesting  
5 pornography of a child were substantial steps that were  
6 taken -- substantial steps.

7 And I argue to you that an email request of  
8 anything -- an email request of anything -- could be an  
9 insubstantial or a non-substantial step in producing child  
10 pornography. Because it is going to come back to the real  
11 question -- really the big one -- whether those videos  
12 have been proven to you beyond a reasonable doubt to have  
13 been produced because of the emails that were sent to her.

14 I will offer you the following conclusions:  
15 Olena Kalichenko is an evil opportunist that has been  
16 extorting Mr. Valerio and may be extorting men around the  
17 world. Because there may be proof in the fact that she is  
18 flying everywhere, that this woman really has a lot of  
19 money. I don't know. Neither do they.

20 She may very well have many different videos  
21 that we do not know about that were previously produced.  
22 For all we know she may have a library of child  
23 pornography in her home, in her apartment, or wherever she  
24 is, on her computers or tablets or phone. We don't know.

25 Incomplete investigation yields incomplete  
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Summation/LaPinta

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1 evaluation.

2 Reasonable arguments create reasonable doubt.  
3 The government has not proven to you that the  
4 videos were produced as a product of the request sent from  
5 joeval5@optonline.net.

6 The dates and times on that Samsung recorder are  
7 not accurate or reliable dates and times. And because  
8 they are not accurate and reliable dates or times, it is  
9 reasonable to suggest that Olena Kalichenko filmed [REDACTED]  
10 and that Joseph Valerio did not produce those awful videos  
11 of his [REDACTED].

12 I have exhausted your patience and I will wind  
13 this thing down. But before I wind it down, let me leave  
14 you with these last thoughts:

15 It is cases like this one, involving children --  
16 not our children, but they are our children -- every child  
17 in our society should be considered our children. These  
18 are our children.

19 When we deal with innocent helpless children, we  
20 want to protect them. We want to do the right thing for  
21 our children.

22 As I told you earlier in my summation, that it  
23 is okay to want to do the right thing for a child. It is  
24 actually the right thing to do. We should all do the  
25 right thing for our children. But we also have to do the

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1 right thing in following the rules and laws of this  
2 federal court. And it is incumbent upon us, just as much  
3 as we want to protect the child, to protect the rights of  
4 an accused and hold the government to their burden of  
5 proving guilt beyond a reasonable doubt.

6 That finger that he used on his opening, and  
7 again in his closing, that finger shouldn't be pointed to  
8 Joseph Valerio. If anyone is going to point the finger  
9 here, the finger should be pointed to this table because  
10 they are the ones that have the burden of proof here.  
11 They are the ones that have to prove these elements of  
12 these federal crimes to you beyond a reasonable doubt.

13 Please, please leave your emotions at the door  
14 before you go in for your deliberations. I know that is  
15 not easy. I know, I know that you really want to punish  
16 people for doing something to those kids. That is a human  
17 instincts. But you are not here to punish. You are here  
18 to find facts. You are here for holding the government to  
19 prove guilt beyond a reasonable doubt.

20 I argue to you, ladies and gentlemen, that they  
21 failed to do that. And there is only one verdict that you  
22 must find in this case, and that verdict is not guilty.

23 Thank you.

24 THE COURT: Members of the jury, as I mentioned  
25 before, the government gets to give a brief rebuttal

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## Rebuttal Summation/Kabrawala

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1 summation and they will do that now.  
 2 Mr. Kabrawala.  
 3 MR. KABRAWALA: Thank you.  
 4 Defense counsel got up here and talked about  
 5 everybody else who is at fault.  
 6 Olena Kalichenko, someone named Daniel Ditmeyer.  
 7 Counsel spoke at length about these people.  
 8 He didn't talk much about the defendant, though.  
 9 He spoke about what the government could have  
 10 done with Kalichenko's email, with her home. He spoke  
 11 about searches and subpoenas that the government could  
 12 have issued to a Russian email account while Russia was at  
 13 civil war with the Ukraine.  
 14 But the government's investigation, that is not  
 15 on trial. The defendant is on trial. Joseph Valerio is  
 16 on trial.  
 17 What defense counsel failed to tell you, and  
 18 very importantly, is that you are going to hear that the  
 19 Judge -- the Judge is going to instruct you that the  
 20 government is not required to use any particular method of  
 21 investigation or call all of the potential witnesses who  
 22 are out there. The Judge is going to tell you that.  
 23 Defense counsel never told you that.  
 24 If the evidence that is presented proves the  
 25 defendant guilty beyond a reasonable doubt, then that is  
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## Rebuttal Summation/Kabrawala

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1 sufficient.  
 2 So we heard all about Ms. Kalichenko. But you  
 3 know what we didn't hear? The defendant, and specifically  
 4 the content of the emails, they are all available to you.  
 5 Defense counsel said and would have you believe  
 6 that the emails were sent between two accounts without  
 7 getting into the substance. Is there any dispute really  
 8 that the defendant didn't send the emails? He sent emails  
 9 from those accounts to his son of Islander tickets that he  
 10 got from his landscaper.  
 11 Is there any dispute that joeval5@optonline.net  
 12 is the defendant's email account and he sent those emails?  
 13 They are his emails. They are his words. And  
 14 they are his conduct.  
 15 Do you know why defense counsel didn't go into  
 16 the content? I think it is pretty clear. The content of  
 17 the emails are extremely damaging to the defense. It is  
 18 all there and all spelled out in the emails, who he is and  
 19 what he wants from Kalichenko.  
 20 Defense counsel made one comment about the  
 21 content of the emails. And do you know what that comment  
 22 was? It is almost not worth discussing.  
 23 The defense said that the emails were a  
 24 misguided chivalry.  
 25 Really? Misguided chivalry? That is what that  
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## Rebuttal Summation/Kabrawala

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1 is?  
 2 Counsel also said there is no forensic evidence  
 3 that Kalichenko produced the videos in response to those  
 4 many emails that the defendant sent her, that there was no  
 5 forensic evidence on the videos themselves.  
 6 All you need is the emails themselves. That is  
 7 better than forensic evidence. The defendant says, follow  
 8 the script. Do exactly as I say. He even says in one of  
 9 the emails, great job in those emails. You saw the email  
 10 today.  
 11 Do you know why he said great job? Because  
 12 Kalichenko followed his script. She did what she was  
 13 told.  
 14 Is this some crazy misunderstanding? What am I  
 15 missing here? Is this some big coincidence that she did  
 16 exactly what she was told in the emails, and the email  
 17 just happened to come from an email address of  
 18 joeval5@optonline.net, even though you heard from  
 19 Cablevision that no two email addresses could be the same,  
 20 even though you saw the recording showing the defendant  
 21 owned that email account, that the account was open for 12  
 22 years, somebody paid thousands of dollars for the  
 23 Cablevision account.  
 24 Defense counsel also said, where is Helena?  
 25 Well, it is because of the FBI's investigation  
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## Rebuttal Summation/Kabrawala

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1 that she wasn't tipped off. And it is because of the  
 2 FBI's investigation that she is under arrest. That she  
 3 traveled to the United States and was arrested by Agent  
 4 Troyd and others.  
 5 That is the investigation.  
 6 Where is she? Where is Kalichenko? She is in  
 7 jail and she is facing charges. And the government can't  
 8 call her to testify as a witness because there are active  
 9 charges against her.  
 10 MR. LATO: Objection.  
 11 THE COURT: Sustained.  
 12 The jury is to disregard that.  
 13 MR. KABRAWALA: Counsel also said that she has a  
 14 cloak of immunity.  
 15 She is going to face justice. She has her day  
 16 in court. She has no cloak of immunity.  
 17 Another very important point about Kalichenko,  
 18 since we are on the topic.  
 19 The government didn't choose Kalichenko. The  
 20 government didn't choose Kalichenko to make child  
 21 pornography videos with her daughter. The defendant chose  
 22 Kalichenko to make child pornography videos. Do you know  
 23 why he chose her? Because she would follow the script and  
 24 she would do it for money.  
 25 Exactly what she did. She exploited her child  
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Rebuttal Summation/Kabrawala

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1 on video and sent those videos right to the defendant's  
2 inbox.

3 Speaking of videos, the defense counsel said how  
4 do you know it is videos she produced in response to those  
5 emails? That she had a library of child porn sending to  
6 men all over the world.

7 As an example, defense counsel points out there  
8 is a toothbrush in one of the videos. You remember the  
9 video. I don't need to describe it again.

10 That is reasonable doubt? That the kid is  
11 masturbating herself with a toothbrush and toys as opposed  
12 to just toys alone as per the defendant's email?

13 Defense counsel also suggests that the emails  
14 were never viewed, never viewed; that the defendant sent  
15 dozens of emails to this woman asking that very specific  
16 sex acts be performed, and says good job, and pays her  
17 money for them and never views them?

18 Oh, by the way, he also admitted, he confessed  
19 that he directed Kalichenko to produce child pornography  
20 and that he received the child pornography emails by  
21 video. So he never viewed them?

22 Take a look at the July 23, 2012 email. That is  
23 associated with the first video that you saw. That email  
24 contains attachments like all the other ones. And there  
25 are child -- they are child pornography videos.

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Rebuttal Summation/Kabrawala

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1 The July 23 email. On that date, do you  
2 remember what happened after the defendant got his videos  
3 that he asked for? He sent Kalichenko \$900, the most he  
4 ever sent her before in one shot.

5 So he never saw the videos? Of course he saw  
6 the videos.

7 He saw the videos. She followed the script. He  
8 sent her the most money that she was ever sent -- that he  
9 ever sent her.

10 Now, about the email account,  
11 joeval5@optonline.net, how do you know it is the  
12 defendant?

13 We have gone through this. It is somebody from  
14 a local tri-state IP address. You can see who is using  
15 the account because he is talking about things that  
16 happened in New York.

17 Kalichenko didn't hack into it. She didn't  
18 just -- let's go with this for a second. If Kalichenko  
19 hacked into his email account, so she sent herself dozen  
20 of emails specifically directing child pornography to be  
21 produced, and made the emails and emailed them to the  
22 defendant, and somehow hacked into his computer, and put  
23 them on his computer, and then asked him for money, right?  
24 Let's go with this. She asked him for money, and he sent  
25 her money via Western Union. And she picked it up in

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Rebuttal Summation/Kabrawala

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1 another country. If she was such a super hacker, why  
2 wouldn't she just rob him blind on the first go and get  
3 all his credit card information? Why would she come up  
4 with an elaborate scheme that lasted two years that she  
5 had to produce child pornography as a result of it, or she  
6 is paid to, I should say?

7 She is not a saint. She is a horrible person.  
8 That is what she is. She exploited her child for money,  
9 and that the defendant had paid her.

10 Let's talk about another hypothetical.  
11 You saw when the travel records indicated she  
12 came into the country, right? September 2nd, 2011.  
13 She left October 26th, 2011.  
14 When were the pictures of [REDACTED] made, the  
15 [REDACTED]?

16 September 2010, January 2011.  
17 She is not in the country. You saw the first  
18 email between them, hey, how are you doing? Do you want  
19 to get to know each other? What do you do? Where do you  
20 live? Do you want to go out?

21 That is in the summer of 2011. She is not even  
22 here. She gets here and visits him months after that  
23 email.

24 Let's entertain the hypothetical possibility  
25 that Kalichenko, the super hacker that she is, somehow

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Rebuttal Summation/Kabrawala

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1 came to the defendant's house before they even met, a year  
2 before she was even in the country at this time, staying  
3 with the defendant, and she got some costumes. She then  
4 brought [REDACTED] down to the basement, took a whole bunch of  
5 pictures of her naked. And somehow set the date of the  
6 video camera to be two different years, right? A few  
7 months apart. And she built this contraption with the  
8 tool belt she was carrying and her power drill. By the  
9 way, this is all while everyone is eating upstairs, having  
10 dinner, and she is building this thing that weighs a lot  
11 and there is a secret camera in it.

12 After she is done building that, she dresses the  
13 kids up, several costume changes.

14 And then she takes the camcorder and puts black  
15 tape over it to hide the indicator light. She hides this  
16 expensive camera in the ceiling. Nobody notices it for  
17 three or four years that it is hidden in the ceiling.

18 Then she -- I guess what she must have done then  
19 is, she goes back home to the Ukraine, gets a time  
20 machine, and she goes back in time and resets the time on  
21 the video camera to make it today's date.

22 Even if you were to believe that, and even if  
23 that were somehow possible within the realm of reality,  
24 what is the financial incentive? Why would she make  
25 videos, child pornography images of [REDACTED]

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## Rebuttal Summation/Kabrawala

1040

1 You know her MO. She wants money. What is the  
2 money in that, right? Why make these images of [REDACTED],  
3 delete them, hide the camera -- by the way, take the  
4 Samsung memory card and put it in the defendant's upstairs  
5 office area, and this is all presuming that the defendant  
6 doesn't know that he is missing a very expensive camera.

7 You know how the defendant gets in his emails if  
8 he doesn't get what he wants, if he believes that  
9 Kalichenko took the camera, we submit that you would have  
10 seen a very angry email in all caps, where is my camera?

11 There is also -- take a look at Exhibit 205, the  
12 second page.

13 Defense counsel argued where are the videos in  
14 the changing rooms?

15 According to defendant's emails, he really  
16 wanted to see sexually explicit emails of [REDACTED] in public  
17 places.

18 Defense counsel made that argument. Take a look  
19 at Government's Exhibit 205, right? The second page.

20 She says, Joseph, I went to the pool yesterday.  
21 Phones are supposed to be left in the lockers and are not  
22 allowed to take either in the changing room or the  
23 swimming area. It is forbidden.

24 Then she goes later on and says, how can you  
25 tell me that you don't need me and [REDACTED] anymore just

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## Rebuttal Summation/Kabrawala

1041

1 because I couldn't get you the pool videos?

2 She is telling the defendant she can't make the  
3 public videos because she is not allowed to. They don't  
4 allow cameras into the pool area.

5 That is why there are no videos of the changing  
6 room.

7 Also, by the way, the defendant also had eight  
8 weeks notice that the FBI was coming. You remember the  
9 text messages. Joe, the FBI is coming for you.

10 Eight weeks notice.

11 Defense counsel also suggested that [REDACTED] might  
12 have been too young to make the videos, that we don't know  
13 her age.

14 It doesn't change the fact of the emails, the  
15 attempt, the conspiracy.

16 What defense counsel didn't tell you was that  
17 the government need not show that videos were actually  
18 produced to establish an attempt or a conspiracy. That  
19 is, the defendant can be convicted of conspiracy and  
20 attempt even if there are no videos, so long as he  
21 attempted to get the videos, so long as he conspired to  
22 sexually exploit [REDACTED]

23 Now, defense counsel said, or suggested, argued  
24 that the defendant's confession was coerced, a lot of  
25 agents in the house.

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## Rebuttal Summation/Kabrawala

1042

1 What did you hear that the FBI did when they  
2 arrived at the house at 6:00 a.m.? They called the  
3 defendant. Hey, we are outside, would you let us in, we  
4 have a search warrant, a court-ordered search warrant.

5 It was in his own dining room, sitting down,  
6 drinking coffee out of mugs. You saw the rainbow mug.  
7 There are no handcuffs, no restraints. No one yelling at  
8 him. There are no guns drawn. Not even a raised voice.

9 Defense counsel also said that people could be  
10 falsely charged and then say I want to kill myself because  
11 the charges themselves are so weighty.

12 That is not what happened here. He was  
13 confronted that there were videos of his [REDACTED] found. And  
14 do you know what he said? I have no family anymore. Do  
15 you know why? Because he knew he was caught. He knew we  
16 got him.

17 Now, this is a very clear case. The proof is  
18 overwhelming.

19 To believe the defendant's version of the  
20 events, you would have to believe that the defendant is  
21 really the unluckiest human being on the face of the  
22 planet and that there is this grand conspiracy against  
23 him.

24 You will have to believe that Kalichenko snuck  
25 into the house even before she met him, redated the SD

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## Rebuttal Summation/Kabrawala

1043

1 cards three times, snuck into his email account, all  
2 without him noticing, and him sending emails to other  
3 people in his life, like his landscaper and his son,  
4 without noticing the other emails, and that someone else  
5 with a New York IP address is sending the emails.

6 You would have to believe that  
7 Special Agent Troyd and Detective Forrestal were lying  
8 about the defendant's confession to credit the defendant's  
9 story.

10 MR. LATO: Objection.

11 THE COURT: Overruled.

12 MR. KABRAWALA: Think about what is plausible,  
13 what makes sense in your day-to-day common sense.

14 We submit to you that the defendant is guilty  
15 and the overwhelming evidence proves that.

16 We ask that you at this point hold the defendant  
17 accountable for his crimes and find him guilty on all  
18 counts.

19 Thank you.

20 THE COURT: Members of the jury, that completes  
21 the summations. The next phase of the case are my  
22 instructions on the law.

23 We will take a break and we will begin that now.  
24 I don't think I will finish my instructions on the law.

25 But we will go to 4:30 or somewhere around that time and I

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## Rebuttal Summation/Kabrawala

1044

1 will finish them tomorrow morning and then you can start  
 2 your deliberations.  
 3 You can't discuss the case yet though.  
 4 We will take a short break.  
 5 Thank you.  
 6 (Whereupon, at this time the jury left the  
 7 courtroom.)  
 8 THE COURT: Will everyone be seated.  
 9 I think I will just read part one and then I  
 10 will stop.  
 11 Any objection to doing that?  
 12 MR. LATO: No, your Honor.  
 13 MR. KABRAWALA: No, your Honor.  
 14 MR. BODE: No, your Honor. I assumed we weren't  
 15 going to make it.  
 16 THE COURT: That should take us to around 4:30.  
 17 Let's take a ten minute break and see if we have  
 18 enough time.  
 19 Thank you.  
 20  
 21 (Whereupon, a recess was taken.)  
 22  
 23  
 24  
 25

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## CHARGE OF THE COURT

1046

1 requesting it and it will be sent back to you in the jury  
 2 room.  
 3 So let's begin.  
 4 Now that the evidence in this case has been  
 5 presented and the attorneys for the government and the  
 6 defendant have concluded their closing arguments, it is my  
 7 responsibility to instruct you as to the law that governs  
 8 this case.  
 9 My instructions will be in three parts:  
 10 First, I will instruct you regarding the general  
 11 rules that define and govern the duties of a jury in a  
 12 criminal case;  
 13 Second, I will instruct you as to the legal  
 14 elements of the crimes charged in the indictment, that is,  
 15 the specific elements that the government must prove  
 16 beyond a reasonable doubt to warrant a finding of guilt;  
 17 And third, I will give you some general rules  
 18 regarding your deliberations.  
 19 Part 1.  
 20 To begin with, it is your duty to find the facts  
 21 from all the evidence in this case. You are the sole  
 22 judges of the facts and it is, therefore, for you and you  
 23 alone to pass upon the weight of the evidence and to draw  
 24 all inferences as you deem to be reasonable and warranted  
 25 from the evidence or lack of evidence in this case.

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## CHARGE OF THE COURT

1045

1 THE COURT: I'm marking the final copy of the  
 2 jury instructions as Court Exhibit D. It's been provided  
 3 to both sides.  
 4 (Court Exhibit D received in evidence.)  
 5 We will bring in the jury.  
 6 (The jury enters the courtroom).  
 7 THE COURT: Everyone can be seated.  
 8 Members of the jury, I will now give you my  
 9 instructions on the law. I estimate it will take about  
 10 two hours. I will not do the whole thing today. We will  
 11 go to 4:30 then stop and then I will read you the rest  
 12 tomorrow morning.  
 13 I want to emphasize even though I'm dividing up  
 14 part of it to hear today and part of it tomorrow, you  
 15 should consider the instructions together as a whole. The  
 16 fact I'm only doing part today and part tomorrow is of no  
 17 significance. You can consider the instructions as a  
 18 whole.  
 19 The next thing I will tell you, you are free to  
 20 take notes during my instructions if you wish; it's up to  
 21 you. I don't do this off the top of my head. Everything  
 22 I am telling you is typed out here and written out. The  
 23 law requires me to read it to you.  
 24 However, if you wanted a copy of my instructions  
 25 during deliberations, all you have to do is send a note

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## CHARGE OF THE COURT

1047

1 With respect to any question concerning the  
 2 facts, it is your recollection of the evidence that  
 3 controls. To the facts as you find them, you must apply  
 4 the law in accordance with my instructions. While the  
 5 lawyers may have commented on some of these legal rules,  
 6 you must be guided only by what I instruct you about them.  
 7 You must follow all the rules as I explained them to you.  
 8 You may not follow some and ignore others.  
 9 The fact this prosecution is brought in the name  
 10 of the United States government does not entitle the  
 11 United States to any greater consideration than the  
 12 defendant is entitled to. By the same token it is  
 13 entitled to no less consideration. The parties, the  
 14 United States government and the defendant, are equal  
 15 before this Court and they are entitled to equal  
 16 consideration. Neither the government nor the defendant  
 17 is entitled to any sympathy or favor.  
 18 Now I will give you instructions regarding the  
 19 presumption of innocence and burden of proof.  
 20 You must remember that the indictment in this  
 21 case is only an accusation. It is not evidence. The  
 22 defendant has pled not guilty to that indictment.  
 23 As a result of the defendant's plea of not  
 24 guilty, the burden is on the prosecution to prove guilt  
 25 beyond a reasonable doubt. This burden never shifts to a

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**CHARGE OF THE COURT****1048**

1 defendant for the simple reason that the law never imposes  
 2 upon a defendant in a criminal case the burden or duty of  
 3 calling any witness or producing any evidence. The law  
 4 presumes the defendant to be innocent of the charge  
 5 against him. I, therefore, instruct you that the  
 6 defendant is to be presumed by you to be innocent  
 7 throughout your deliberations until such time, if ever,  
 8 you as a jury are satisfied that the government has proven  
 9 him guilty beyond a reasonable doubt.

10 The defendant begins the trial here with a clean  
 11 slate. This presumption of innocence alone is sufficient  
 12 to acquit a defendant unless you as jurors are unanimously  
 13 convinced beyond a reasonable doubt of his guilt after a  
 14 careful and impartial consideration of all of the evidence  
 15 in this case. If the government fails to sustain its  
 16 burden, you must find the defendant not guilty.

17 This presumption was with the defendant when the  
 18 trial began and remains with him even now as I speak to  
 19 you and will continue with the defendant into your  
 20 deliberations unless and until you are convinced that the  
 21 government has proven his guilt beyond a reasonable doubt.

22 I will now give you instruction regarding proof  
 23 beyond a reasonable doubt.

24 I have said that the government must prove the  
 25 defendant guilty beyond a reasonable doubt. The question

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**CHARGE OF THE COURT****1050**

1 evidence you are satisfied of the defendant's guilt beyond  
 2 a reasonable doubt, you should vote to convict.

3 I wish to instruct you now as to what is  
 4 evidence and how you should consider it.

5 The evidence upon which you are to decide what  
 6 the facts are comes in several forms:

7 1, sworn testimony of witnesses, both on direct  
 8 and cross-examination;

9 2, exhibits that have been received in evidence  
 10 by the Court;

11 And 3, facts or testimony to which the lawyers  
 12 have agreed or stipulated.

13 What is not evidence.

14 Certain things are not evidence and are to be  
 15 disregarded by you in deciding what the facts are. I will  
 16 list them for you now.

17 These things are not evidence:

18 1, the contents of the indictment are not  
 19 evidence.

20 2, arguments or statements by lawyers are not  
 21 evidence.

22 3, questions put to the witnesses are not  
 23 evidence.

24 4, objections to the questions or to offered  
 25 exhibits are not evidence.

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**CHARGE OF THE COURT****1049**

1 naturally is what is a reasonable doubt? The words almost  
 2 define themselves. It is a doubt based upon reason and  
 3 common sense. It is a doubt that a reasonable person has  
 4 after carefully weighing all of the evidence. It is a  
 5 doubt which would cause a reasonable person to hesitate to  
 6 act in a matter of importance in his or her personal life.

7 Proof beyond a reasonable doubt must, therefore, be proof  
 8 of such a convincing character that a reasonable person  
 9 would not hesitate to rely and act upon it in the most  
 10 important of his own affairs. A reasonable doubt is not a  
 11 caprice or whim. It is not a speculation or suspicion.

12 It is not an excuse to avoid the performance of an  
 13 unpleasant duty and it is not sympathy.

14 In a criminal case, the burden is at all times  
 15 upon the government to prove guilt beyond a reasonable  
 16 doubt. The law does not require that the government prove  
 17 guilt beyond all possible doubt. Proof beyond a  
 18 reasonable doubt is sufficient to convict. This burden  
 19 never shifts to the defendant which means that it is  
 20 always the government's burden to prove each of the  
 21 elements of the crimes charged beyond a reasonable doubt.

22 If, after fair and impartial consideration of  
 23 all of the evidence you have a reasonable doubt, it is  
 24 your duty to acquit the defendant. On the other hand, if  
 25 after a fair and impartial consideration of all of the

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**CHARGE OF THE COURT****1051**

1 In this regard, attorneys have a duty to their  
 2 clients to object when they believe evidence should not be  
 3 received. You should not be influenced by the objection  
 4 or by the Court's ruling on it. If the objection was  
 5 sustained, ignore the question. If the objection was  
 6 overruled, treat the answer like any other answer. If I  
 7 told you to disregard certain testimony or sustained a  
 8 lawyer's request to disregard or strike certain testimony,  
 9 you are to disregard the testimony.

10 5, what I say in these instructions is not  
 11 evidence.

12 6, if evidence has been received for a limited  
 13 purpose, you must consider that evidence for that limited  
 14 purpose only.

15 7, obviously, anything you may have seen or  
 16 heard outside the courtroom is not evidence.

17 Your verdict must be based solely upon the  
 18 evidence developed at trial or the lack of evidence.

19 It would be improper for you to consider in  
 20 reaching your decision as to whether the government  
 21 sustained its burden of proof any personal feelings you  
 22 may have about the defendant's race, religion, national  
 23 origin, ethnic background, sex or age. All persons are  
 24 entitled to the presumption of innocence and the  
 25 government has the same burden of proof regardless of who

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**CHARGE OF THE COURT****1052**

1 the defendant is.  
 2 In addition, it would be equally improper for  
 3 you to allow any feelings you might have about the nature  
 4 of the crimes charged to interfere with your  
 5 decision-making process. To repeat, your verdict must be  
 6 based exclusively upon the evidence or lack of evidence in  
 7 the case.

8 I told you that evidence comes in various forms  
 9 such as the sworn testimony of witnesses, exhibits and  
 10 stipulations. There are in addition different kinds of  
 11 evidence, direct and circumstantial.

12 Direct evidence is the communication of a fact  
 13 by a witness who testifies to the knowledge of that fact  
 14 as having been obtained through one of the five senses.  
 15 So for example, a witness who testifies to knowledge of a  
 16 fact because he saw it, heard it, smelled it, tasted it or  
 17 touched it is giving evidence which is direct. What  
 18 remains is your responsibility to pass upon the  
 19 credibility of that witness.

20 Circumstantial evidence is evidence which tends  
 21 to prove a fact in issue by proof of other facts from  
 22 which the fact in issue may be inferred.

23 The word "infer" or the expression "to draw an  
 24 inference" means to find that a fact exists from proof of  
 25 another fact. For example, if a fact in issue is whether

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**CHARGE OF THE COURT****1054**

1 The fact one party called more witnesses and  
 2 introduced more evidence than the other does not mean that  
 3 you should necessarily find the facts in favor of the side  
 4 offering the most witnesses. By the same token, you do  
 5 not have to accept the testimony of any witness who has  
 6 not been contradicted or impeached if you find the witness  
 7 not to be credible. You also have to decide which  
 8 witnesses to believe and which facts are true. To do this  
 9 you must look at all the evidence drawing upon your own  
 10 common sense and personal experience. After examining all  
 11 the evidence, you may decide that the party calling the  
 12 most witnesses has not persuaded you because you do not  
 13 believe its witnesses or because you do believe the fewer  
 14 witnesses called by the other side.

15 In a moment I will discuss the criteria for  
 16 evaluating credibility. For the moment, however, you  
 17 should keep in mind that the burden of proof is always on  
 18 the government and the defendant is not required to call  
 19 any witnesses or offer any evidence since he is presumed  
 20 to be innocent.

21 My next instruction relates to the rulings and  
 22 statements that I made during the course of this trial. I  
 23 hereby instruct you that nothing that I said during the  
 24 course of the trial, no question that I have asked, no  
 25 ruling that I have made, no statement that I may make in

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**CHARGE OF THE COURT****1053**

1 it is raining at the moment, neither of us can testify  
 2 directly to that fact sitting as we are in this windowless  
 3 courtroom. Assume, however, that as we are sitting here,  
 4 a person walks into the courtroom wearing a raincoat that  
 5 is soaking wet and carrying an umbrella dripping water, we  
 6 may infer that it is raining outside. In other words, the  
 7 fact of rain is an inference that could be drawn from the  
 8 wet raincoat and the dripping umbrella. An inference is  
 9 to be drawn only if it is logical and reasonable to do so.  
 10 In deciding whether to draw an inference, you must look at  
 11 and consider all of the facts in the light of reason,  
 12 common sense and experience. Whether a given inference is  
 13 or is not to be drawn is entirely a matter for you, the  
 14 jury, to decide. Please bear in mind, however, that an  
 15 inference is not to be drawn by guesswork or speculation.

16 I remind you once again that you may not convict  
 17 the defendant unless you are satisfied of his guilt beyond  
 18 a reasonable doubt, whether based on direct evidence,  
 19 circumstantial evidence or the logical inferences to be  
 20 drawn from such evidence.

21 Circumstantial evidence does not necessarily  
 22 prove less than direct evidence nor does it necessarily  
 23 prove more. You are to consider all the evidence in the  
 24 case, direct and circumstantial, in determining what the  
 25 facts are and in arriving at your verdict.

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**CHARGE OF THE COURT****1055**

1 this charge should be interpreted in any way whatsoever as  
 2 a suggestion of what decision I believe you should make.  
 3 You should understand that I have no opinion as to the  
 4 decision you should make in this case.

5 You will remember that at various times  
 6 throughout the trial I have been called upon to make  
 7 rulings on various questions of law. I have sustained  
 8 objections and I have overruled objections. Please do not  
 9 concern yourself with my reasons for making the rulings  
 10 that I made. These are purely legal matters and must not  
 11 affect your deliberation on the factual matters in this  
 12 case. Nor are you to draw any inferences for or against a  
 13 party because that party raised objections during the  
 14 course of the case. It is the duty of the attorneys on  
 15 each side of the case to object when the other side offers  
 16 testimony or other evidence which the attorney believes is  
 17 not properly admissible. You should not hold against an  
 18 attorney or the defendant either because the attorney has  
 19 made objections or because some of those objections may  
 20 have been overruled by me.

21 When the Court has sustained an objection to a  
 22 piece of evidence or a question addressed to a witness,  
 23 you must disregard it entirely and may draw no inference  
 24 from it or speculate as to what the witness would have  
 25 said if he or she had been permitted to answer the

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## CHARGE OF THE COURT

1056

1 question. Similarly, if after a question was asked and an  
 2 answer given the answer was ordered stricken from the  
 3 record, you must disregard both the answer and the  
 4 question. You are further instructed that with respect to  
 5 every situation where testimony has been stricken, the  
 6 reason for that ruling relates to a matter of law which is  
 7 of no concern of yours and not for your consideration.  
 8 Once stricken, such testimony must be disregarded and  
 9 ignored. The reasons for my striking such testimony  
 10 should not be discussed among you nor should you speculate  
 11 or guess about the basis for my ruling. By the same token  
 12 where I allowed testimony or exhibits to be received into  
 13 evidence over the objection of counsel, this was not an  
 14 indication that I have any opinion as to the weight or  
 15 effect of such evidence. That is for you to decide.  
 16 In reaching your verdict, you also are not to  
 17 concern yourselves in any way with the conferences which  
 18 sometimes took place at the sidebar between the Court and  
 19 counsel for the parties nor are you to draw any inferences  
 20 for or against any parties because that party may have  
 21 requested such a conference. You also must not draw any  
 22 conclusion whatsoever from the fact that from time to time  
 23 I may have asked questions of witnesses. This was solely  
 24 to elicit facts which may or may not be material to your  
 25 determination.

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## CHARGE OF THE COURT

1058

1 witness' testimony.  
 2 Your decision whether or not to believe a  
 3 witness may depend on how that witness impressed you. Was  
 4 the witness candid, frank and forthright? Or did the  
 5 witness seem as if he or she was hiding something, being  
 6 evasive or suspect in some way? How did the way the  
 7 witness testified on direct examination compare with how  
 8 the witness testified on cross-examination? Was the  
 9 witness consistent in his or her testimony or did he or  
 10 she contradict himself or herself? Did the witness appear  
 11 to know what he or she was talking about and did the  
 12 witness strike you as someone who was trying to report his  
 13 or her knowledge accurately?  
 14 How much you choose to believe a witness may be  
 15 influenced by the witness' bias. Does the witness have a  
 16 relationship with the government or the defendant which  
 17 may affect how he or she testified? Does the witness have  
 18 some incentive, loyalty or motive that might cause him or  
 19 her to shade the truth or does the witness have some bias,  
 20 prejudice or hostility that may have caused the witness  
 21 consciously or not to give you something other than a  
 22 completely accurate account of the facts he or she  
 23 testified to?  
 24 Even if the witness was impartial, you should  
 25 consider whether the witness had an opportunity to observe

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## CHARGE OF THE COURT

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1 Remember that in making your determination as to  
 2 the facts, you should rely upon your own recollection of  
 3 the evidence. What I said from time to time during the  
 4 course of the trial or what I say in the charge that I am  
 5 now giving you should not be taken in place of your own  
 6 recollection of the evidence in this case.  
 7 I will now give you an instruction regarding  
 8 witness credibility.  
 9 You have had an opportunity to observe all of  
 10 the witnesses. It is now your job to decide how  
 11 believable each witness was in his or her testimony. You  
 12 are the sole judges of the credibility of each witness and  
 13 of the importance of his or her testimony. It must be  
 14 clear to you by now that you are being called upon to  
 15 resolve various factual issues under the counts of the  
 16 indictment in the face of the very different pictures  
 17 painted by the government and the defense which cannot be  
 18 reconciled. You will now have to decide where the truth  
 19 lies, and an important part of that decision will involve  
 20 making judgments about the testimony of the witnesses you  
 21 have listened to and observed. In making those judgments,  
 22 you should carefully scrutinize all of the testimony of  
 23 each witness, the circumstances under which each witness  
 24 testified and any other matters in evidence which may help  
 25 you to decide the truth and the importance of each

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## CHARGE OF THE COURT

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1 the facts he or she testified about and you should also  
 2 consider the witness' ability to express himself or  
 3 herself. Ask yourselves whether the witness' recollection  
 4 of the facts stands up in light of all other evidence.  
 5 In other words, what you must try to do in deciding  
 6 credibility is to size a person up in light of his or her  
 7 demeanor, the explanations given and in light of all the  
 8 other evidence in the case, just as you would in any  
 9 important matter where you are trying to decide if a  
 10 person is truthful, straightforward and accurate in his or  
 11 her recollection.  
 12 In deciding the question of credibility,  
 13 remember that you should use your common sense, your good  
 14 judgment and your experience.  
 15 In evaluating credibility of the witnesses, you  
 16 should take into account any evidence that the witness who  
 17 testified may benefit in some way from the outcome of this  
 18 case. Such an interest in the outcome creates a motive to  
 19 testify falsely and may sway the witness to testify in a  
 20 way that advances his or her own interests. Therefore, if  
 21 you find that any witness whose testimony you are  
 22 considering may have an interest in the outcome of this  
 23 trial, then you should bear that factor in mind when  
 24 evaluating the credibility of his or her testimony and  
 25 accept it with great care.

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## CHARGE OF THE COURT

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1 This is not to suggest that every witness who  
2 has an interest in the outcome of a case will testify  
3 falsely. It is for you to decide to what extent, if at  
4 all, the witness' interest has affected or colored his or  
5 her testimony.

6 You have heard evidence that a witness made a  
7 statement on an earlier occasion which counsel argues is  
8 inconsistent with the witness' trial testimony. Evidence  
9 of the prior inconsistent statement was placed before you  
10 for the limited purpose of helping you decide whether to  
11 believe the trial testimony of the witness who  
12 contradicted himself. If you find that the witness made  
13 an earlier statement that conflicts with this trial  
14 testimony, you may consider that fact in deciding how much  
15 of his trial testimony, if any, to believe.

16 In making this determination, you may consider  
17 whether the witness purposely made a false statement or  
18 whether it was an innocent mistake, whether the  
19 inconsistency concerns an important factor, whether it had  
20 to do with a small detail, whether the witness had an  
21 explanation for the inconsistency, and whether that  
22 explanation appealed to your common sense.

23 It is exclusively your duty, based upon all the  
24 evidence and your own good judgment, to determine whether  
25 the prior statement was inconsistent and if so how much,

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1 if any, weight to be given to the inconsistent statement  
2 in determining whether to believe all or part or none of  
3 the witness' testimony.

4 I gave you instruction regarding expert  
5 testimony during the trial. I will repeat that to you  
6 now.

7 You have heard during the course of this trial  
8 the testimony of individuals referred to as experts in  
9 their fields. If scientific, technical or other  
10 specialized knowledge will assist the jury to understand  
11 the evidence or to decide a disputed fact, a witness with  
12 a particular knowledge, skill, experience, training or  
13 education may be called to testify about such evidence or  
14 facts in issue in the form of an opinion.

15 The rules of evidence ordinarily do not permit  
16 witnesses to testify to opinions or conclusions. An  
17 exception to this rule exists for those we call expert  
18 witnesses who may state their opinions and who may also  
19 state the reasons for their opinion.

20 You should consider the witness' opinion  
21 received in this case and give it such weight as you may  
22 think it deserves. If you should decide that the opinion  
23 of the witness is not based upon sufficient education and  
24 experience, or that the reasons given in support of the  
25 opinion are not sound or that the opinion is outweighed by

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1 other evidence, you may disregard the opinion entirely.  
2 In sum, the expert witness is in all other  
3 respects the same as any other witness. You should  
4 consider his or her qualifications, his or her experience,  
5 his or her interest in the outcome of the case, if any,  
6 his or her demeanor and all the other factors you have  
7 been instructed to consider in assessing the credibility  
8 of other witnesses.

9 You have heard testimony of witnesses who work  
10 for law enforcement and the government. The fact that a  
11 witness may work for law enforcement or the government  
12 does not mean that his or her testimony is necessarily  
13 deserving of more or less consideration or greater or  
14 lesser weight than that of an ordinary witness.

15 At the same time, it is quite legitimate for  
16 defense counsel to try to attack the credibility of a law  
17 enforcement or a government employee witness on the  
18 grounds that his or her testimony may be colored by a  
19 personal or professional interest in the outcome of the  
20 case.

21 It is your decision, after reviewing all the  
22 evidence, whether to accept the testimony of the law  
23 enforcement and the government employee witnesses and to  
24 give to that testimony whatever weight, if any, you find  
25 it deserves.

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## CHARGE OF THE COURT

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1 I will now give you an instruction regarding  
2 defendant's right not to testify.

3 The defendant did not testify in this case.  
4 Under our Constitution, a defendant has no obligation to  
5 testify or to present any evidence because it is the  
6 government's burden to prove the defendant's guilt beyond  
7 a reasonable doubt. That burden remains with the  
8 government throughout the entire trial and never shifts to  
9 a defendant. A defendant is never required to prove that  
10 he or she is innocent.

11 You may not attach any significance to the fact  
12 that the defendant did not testify. No adverse inference  
13 against him may be drawn by you because he did not take  
14 the witness stand. You may not consider this against the  
15 defendant in any way in your deliberations in the jury  
16 room.

17 You have heard testimony about evidence seized  
18 from the defendant during searches at the defendant's  
19 house. Evidence obtained from these searches was properly  
20 admitted in this case and may be considered by you.  
21 Whether you approve or disapprove of how it was obtained  
22 should not enter into your deliberations because I now  
23 instruct you that the government's use of this evidence is  
24 entirely lawful.

25 You must, therefore, regardless of your personal  
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## CHARGE OF THE COURT

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1 opinions give this evidence full consideration along with  
2 all the other evidence in the case in determining whether  
3 the government has proved the defendant's guilt beyond a  
4 reasonable doubt.

5 There has been evidence that the defendant made  
6 certain statements in which the government claims he  
7 admitted certain facts charged in the indictment.

8 In deciding what weight to give the defendant's  
9 statements, you should first examine with great care  
10 whether each statement was made and whether in fact it was  
11 voluntarily and understandingly made. I instruct you that  
12 you are to give the statements such weight as you feel  
13 they deserve in light of all the evidence. However, if  
14 you find that the statement was either involuntary or not  
15 knowingly made, you may not consider it in any way.

16 The law does not require any party to call as  
17 witnesses all persons who may have been present at any  
18 time or place involved in the case or who may appear to  
19 have some knowledge of the matter in issue at this trial.  
20 Nor does the law require any party to produce as exhibits  
21 all papers and things mentioned during the course of the  
22 trial.

23 There is no legal requirement that the  
24 government prove its case through any particular means.  
25 While you are to carefully consider the evidence adduced

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## CHARGE OF THE COURT

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1 by the government, you not to speculate as to why agents  
2 used the techniques they did or why they did not use other  
3 techniques. The government is not on trial. Law  
4 enforcement techniques are not your concern. Your concern  
5 is to determine whether or not, on the evidence or lack of  
6 evidence, the defendant's guilt has been proved beyond a  
7 reasonable doubt.

8 In alleging dates, the indictment charges "on or  
9 about" certain dates. The proof need not establish with  
10 certainty the exact date of an alleged offense. The law  
11 only requires the evidence establish beyond a reasonable  
12 doubt that the dates alleged in the indictment and the  
13 dates established by the testimony or exhibits are  
14 substantially similar.

15 You have heard evidence about the involvement of  
16 another person in some of the events referred to in the  
17 indictment. You may not draw any inference favorable or  
18 unfavorable towards the government or the defendant from  
19 the fact that certain persons are not on trial before you  
20 or are not named as defendants in this particular case.  
21 That this individual is not on trial before you or is not  
22 named as the defendant in this case is not your concern.  
23 You should neither speculate as to the reason people are  
24 not on trial before you nor allow their absence as parties  
25 to influence in any way your deliberation in this case.

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1 During the course of the trial, you may have  
2 heard testimony that attorneys interviewed witnesses when  
3 preparing for and during this trial. You must not draw  
4 any unfavorable inference from that fact. On the contrary  
5 attorneys are obliged to prepare their case as thoroughly  
6 as possible and in the discharge of that responsibility  
7 interview witnesses in preparation for the trial and from  
8 time to time as may be required during the course of the  
9 trial.

10 The attorneys for the United States and the  
11 attorneys for the defendant have entered into stipulations  
12 concerning certain facts that are relevant to this case.  
13 A stipulation of fact is simply an agreement among the  
14 parties that a certain fact is true. You should regard  
15 such agreed facts as true. However, what weight to give  
16 those facts is entirely up to you. You are the sole  
17 judges of the facts and you decide what weight to give  
18 those facts.

19 That concludes Part 1. Even though it's only a  
20 little after 4:10, I don't want to start Part 2 and break  
21 it up. I want to give you that piece together.

22 We will adjourn for the day, start tomorrow at  
23 9:30. I probably have another hour and a half of  
24 instructions to you, then you will begin your  
25 deliberations.

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## CHARGE OF THE COURT

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1 As I said, the schedule is the same, 9:30 to  
2 430. One difference, during deliberation, you are  
3 provided with lunch. So when you come in in the morning,  
4 Michelle will have a menu from a local deli in the jury  
5 room. You will check what you would like to have for  
6 lunch and it will be brought to the jury, the jury room,  
7 during your deliberations.

8 So that's the schedule we will follow tomorrow.  
9 I want to emphasize a couple of things to you.

10 One is don't discuss the case among yourselves or with  
11 anyone else and I want to emphasize this because tomorrow  
12 morning before I bring you out at 9:30, you will be back  
13 there in the jury room, you are not allowed to start  
14 discussing the case yet. I haven't given you the full  
15 instructions on the law. You will have plenty of time to  
16 discuss the case. Please wait until I have completed my  
17 instructions and I tell to you start deliberating.

18 Don't read or listen to anything regarding the  
19 case. And that's all the instructions that I have for  
20 today at least.

21 So have a good night and I will see you tomorrow  
22 morning at 9:30.

23 (The jury leaves the courtroom.)

24 THE COURT: Everyone can be seated.

25 Just give me two minutes. I want to grab some

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1 notes. I was going start to put my Rule 29 ruling on the  
2 record. I may finish that tomorrow.

3 (Pause)

4 THE COURT: I will put at least part of the  
5 Court's ruling on the record. If I don't finish in the  
6 next 15 minutes or so, I will complete it tomorrow while  
7 the jury is deliberating.

8 As I said before, I am denying the Rule 29  
9 motion by the defense and I want to state the reasons for  
10 that now.

11 First, with respect to the motion, the standard  
12 is well settled for Rule 29 the Court should grant the  
13 motion if it concludes that no rational trier of fact will  
14 find the defendant guilt beyond a reasonable doubt based  
15 on the evidence presented at the trial. It's in the rule  
16 itself as well as United States v. Jackson, 335 F. 3d,  
17 170, page 180, Second Circuit 2003. And the standard for  
18 evaluating that conviction must be upheld under Rule 29 or  
19 allowed to go to the jury after viewing the evidence in  
20 the light most favorable to the government and drawing all  
21 reasonable inferences in its favor, any rationale trier of  
22 fact could have found the essential element of the crime  
23 beyond a reasonable doubt; United States v. Medina, 944 F.  
24 2d, 60, page 66, Second Circuit 1991.

25 Quoting in Supreme Court:

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1 In analyzing the efforts, the Second Circuit  
2 emphasizes, pieces of evidence must be viewed not in  
3 isolation but in conjunction and the jury's verdict may be  
4 based on circumstantial evidence; United States v.  
5 D'Amato, 39 F.3d, 1249, at page 1256, Second Circuit 1954.  
6 And also Second Circuit emphasized, credibility of  
7 witnesses with the jury rather than the Court to  
8 determine; United States v. Strauss, 999, F.2d 692, page  
9 696, Second Circuit 1993.

10 That is the standard the Court has applied here  
11 and concludes that for each of the counts of the  
12 indictment, there is more than sufficient evidence for the  
13 jury, if the government's evidence is credited and all  
14 reasonable inferences are drawn in favor of the government  
15 from that evidence, to rationally convict the defendant on  
16 each and every count of the indictment.

17 I won't go through all the details of the  
18 evidence. In summary, the two searches of the defendant's  
19 home, including the SD card in the computer hard drive,  
20 the Western Union records, the e-mails and defendant's  
21 statements to law enforcement in terms of the major  
22 categories of proof that the government offered are  
23 sufficient if the jury credits that evidence for the jury  
24 to rationally find that the defendant possessed child  
25 pornography on his computer and on the SD card and that

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1 they were his. They could rationally find e-mails were  
2 sent to him, to Ms. Kalichenko and that the child  
3 pornography involving [REDACTED] was received by him. They  
4 could similarly conclude based upon that evidence that as  
5 was noted by the government in the summation, specific  
6 e-mail conspiracy issues, that there is an agreement  
7 between Kalichenko and the defendant that she would  
8 exploit, sexually exploit, [REDACTED] in videotapes sent to  
9 the defendant in exchange for money.

10 The jury can also rationally find based on  
11 e-mails and other evidence in the case that by paying for  
12 the videos and providing the script for the videos that he  
13 aided and abetted the exploitation of [REDACTED] in the  
14 Ukraine outside the United States. The issue obviously  
15 that was raised by the defense with respect to whether or  
16 not the videos were preexisting, again, if the evidence is  
17 construed most favorably to the government in terms of  
18 what was being requested in the e-mails, what was received  
19 back in those e-mails in terms of the videos, the timing  
20 of the videos, all the evidence, the circumstantial  
21 evidence viewed most favorably to the government can  
22 support a rational finding those videos were not  
23 preexisting but were made only after the defendant made  
24 the request for the videos to be produced.

25 In terms of the charge involving the [REDACTED], the  
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1 jury could rationally find based upon the location of the  
2 images and the control over the house, the camera and the  
3 other circumstantial evidence presented with respect to  
4 that, the circumstance surrounding the image, the  
5 testimony of the sister, not the images themselves but  
6 defendant's involvement for filming the daughter for  
7 modeling purposes, if all that circumstantial evidence is  
8 taken together, the jury viewed those favorably to the  
9 government, the jury can certainly rationally find Mr.  
10 Valerio sexually exploited his [REDACTED] and produced the  
11 images found on the SD card and adduced the [REDACTED] to  
12 engage in sexually-explicit conduct and can rationally  
13 find in the government's favor on that count as well.

14 I want to focus more particular on Mr. Lato's  
15 specific argument as relates to whether or not there is  
16 sufficient proof for each of the attempt counts  
17 constituting an attempt and whether or not those counts  
18 are multiplicitous of a sexual exploitation count which I  
19 understand is your argument.

20 MR. LATO: Yes, your Honor.

21 THE COURT: First I want to focus on whether or  
22 not there is sufficient proof of attempt, sufficient proof  
23 on each charge for there to be attempt as that is defined  
24 under the law.

25 And I spent some time yesterday going through  
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1 each e-mail that is the subject of a separate count to  
2 review it, to see whether or not a jury could rationally  
3 conclude that each e-mail constituted a separate attempt  
4 to commit the crime. And my conclusion is that they  
5 could.

6 Just with respect to the standard for attempt, I  
7 read the instruction to the jury and, obviously, that is  
8 the law but let me state there are two cases that I  
9 reviewed in particular on this issue that set out what the  
10 law requires in the Second Circuit for attempt. One is  
11 United States v. Desposito, 704, F.3d 221, Second Circuit,  
12 2013. In summary, the government has to show that the  
13 defendant took a substantial step toward committing the  
14 crime that was strongly corroborative, firmness of the  
15 defendant's criminal intent. And that case cites to  
16 another case, a terrorism case, United States v. Farhane,  
17 634, F.3d 127, Second Circuit 2011, which is a very long  
18 discussion about the substantial step requirement for  
19 attempt.

20 Again, I will not repeat it here. I want the  
21 record clear I have reviewed that standard in applying it  
22 to the evidence presented before me.

23 I also note there are a number of cases out  
24 there that discuss, not in this circuit, but informative  
25 on this issue of whether or not a solicitation to commit a

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1 crime itself can be an attempt. There are two cases that  
2 discuss this and conclude that it can -- don't conclude  
3 always an attempt but they certainly conclude that a  
4 solicitation under certain circumstances can itself  
5 constitute an attempt. One is United States v. American  
6 Airlines, Inc. which was an anti-trust case, 743 F.2d  
7 1114, Fifth Circuit, 1984, and United States v. Rovetuso,  
8 768, F.2d 809, Seventh Circuit, 1985, which discusses the  
9 fact a solicitation depending upon the circumstances can  
10 constitute in and of itself an attempt.

11 Here, I want to make clear although I cited the  
12 case of the e-mails that I reviewed in connection with  
13 each of those counts, it's more than just a solicitation  
14 where, for example, an e-mail said could you send me child  
15 pornography, as the government pointed out during  
16 summations or trial. Each of those e-mails give specific  
17 direction. One e-mail refers to a script. So it's a  
18 solicitation combined with specific directions on how it  
19 is to be carried out, often when it should be carried out  
20 and in many instances providing money in the form of MTCN  
21 number references, money that is provided, has been  
22 provided, will be provided. So many of these also include  
23 an element of payment or promise of payment.

24 I conclude that each one of these e-mails  
25 separately could constitute an attempt because a

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1 substantial step could be found by the jury with respect  
2 to each one of these e-mails to assist in the exploitation  
3 of the child in the Ukraine, sexual exploitation of the  
4 child in the Ukraine and the e-mails are strongly  
5 corroborative of criminal intent based on the details of  
6 what is to be done and the discussion of money and other  
7 things that will be provided or not be provided depending  
8 on whether the instructions are followed.

9 I want to make clear also this is not multiple  
10 discussions about one video being produced and there is  
11 multiple discussions about directions regarding that  
12 video. If the evidence is construed most favorably to the  
13 government, the jury could find certainly that a number of  
14 videos are being created as a result of the direction and  
15 then more directions being given for additional videos to  
16 be done. And there are numerous references in the videos  
17 to having received the videos, wanting more videos. And  
18 as I will go through tomorrow, there are a couple of  
19 instances that I looked at very carefully because the  
20 e-mails were in one instance a day apart, in another  
21 instance six or seven days apart. I wanted to ensure that  
22 the two e-mails didn't relate to the same request for some  
23 type of exploitation to be done. And I think, again, when  
24 those e-mails are construed most favorably to the  
25 government, the jury could find even in one of those is

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1 miles away, even the ones close together the defendant was  
2 seeking additional new videos of [REDACTED], not one that he  
3 previously requested in a prior e-mail that's the subject  
4 of a separate count.

5 I will briefly go through that tomorrow and I  
6 will deal with the multiplicity issue, if there are  
7 convictions on each count; that can be dealt with at  
8 sentencing.

9 Why don't we stop for now it's 4:30 and we will  
10 get started at 9:30. I did want to mention a couple of  
11 objections during the summation. One I sustained because  
12 the government made reference to Ms. Kalichenko not being  
13 able to testify. I sustained that objection because I  
14 don't think that's something that the jury should  
15 speculate about or should be commented on by the  
16 government. The other two I overruled. One Mr. LaPinta  
17 made early on to the government referring to e-mails,  
18 that's an attempt charge. There was an objection I  
19 overruled. The government can argue whether an e-mail  
20 constitutes an attempt. And one in the rebuttal the  
21 government suggested to -- I believe what the defense said  
22 you have to believe the agents -- law enforcement  
23 witnesses were lying. It is true that certainly Mr.  
24 LaPinta focused on aspects if you believe what was said  
25 suggests other things -- claim other things they had done

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1 that they had not admitted to. At least during the  
 2 cross-examination I believe based on the fact no notes  
 3 were taken at the time of the interview that was done many  
 4 days later certainly there could be implication  
 5 potentially, I guess, the agents made up at least maybe  
 6 not the second statement regarding the [REDACTED] but that made  
 7 up the admission regarding the admission -- admitting that  
 8 the e-mails were sent by Mr. Valerio. I think, obviously,  
 9 I told the jury it's all argument whether or not the  
 10 evidence would support that or whether or not that was  
 11 exactly what the defense was arguing is up to the jury to  
 12 decide.

13 I think the government objected to something.  
 14 You objected and it was overruled.

15 Anything else we need to address then today?

16 MR. BODE: No, your Honor.

17 THE COURT: I do want to compliment both sides  
 18 regardless of the verdict. I believe the lawyers on both  
 19 sides did an excellent job for their clients, very  
 20 civilized in dealing with the Court trying to make the  
 21 trial run smoothly. I appreciate that.

22 MR. LATO: Before you leave, your Honor, with  
 23 respect to the multiplicity that you touched upon, if  
 24 there is a conviction, from the defense standpoint, we  
 25 don't need to go into it; assuming conviction on the

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**I-N-D-E-X****W-I-T-N-E-S-S-E-S**

FRANCES VALERIO	934
DIRECT EXAMINATION	934
BY MR. LATO	
CROSS-EXAMINATION	939
BY MR. KABRAWALA	
REDIRECT EXAMINATION	944
BY MR. LATO:	
RECROSS-EXAMINATION	945
BY MR. KABRAWALA	

**E-X-H-I-B-I-T-S**

Court Exhibit D received in evidence	1045
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1 substantive counts, the attempts occur within the same  
 2 time frame would have to be merged at sentencing. No  
 3 reason to go into that.

4 THE COURT: The theory would be if he was  
 5 convicted of the substantive count and the attempt counts,  
 6 I would not be sentencing on attempts, just the  
 7 substantive. There is actually -- I have to look at it  
 8 more carefully. I didn't mean to deal with it yesterday.  
 9 Some Courts suggest vacating attempt convictions. Some  
 10 say as long as you don't sentence, you don't have to  
 11 vacate.

12 MR. LATO: They talk about merging. There is no  
 13 merge mechanism. What it means, I assume, to vacate some  
 14 of the counts but the reality is if there is conviction on  
 15 the substantive counts, the attempts in the same time  
 16 period are superfluous and the government I guess won't  
 17 object at that point because if the Second Circuit were to  
 18 reverse with respect to the substantive, they could  
 19 restore the counts.

20 THE COURT: I agree but we will address that if  
 21 we need to.

22 Have a good night.

23 (The trial was adjourned to Thursday, November  
 24 13, 2013 at 9:30 a.m.)

25

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<b>\$</b>	954:25; 965:7; 1017:2	<b>210</b> [1] - 967:8	<b>35</b> [1] - 923:18
<b>\$1,000</b> [2] - 972:11, 24	<b>1954</b> [1] - 1069:5	<b>211</b> [2] - 961:8, 15	<b>39</b> [1] - 1069:5
<b>\$100</b> [1] - 961:6	<b>1984</b> [1] - 1073:7	<b>214</b> [2] - 984:7, 23	<b>3:39</b> [2] - 951:5;
<b>\$12,000</b> [1] - 965:15	<b>1985</b> [1] - 1073:8	<b>216</b> [1] - 962:22	1016:15
<b>\$150</b> [1] - 959:3	<b>1991</b> [1] - 1068:24	<b>22</b> [7] - 956:12;	<b>3:42</b> [1] - 1016:16
<b>\$7,000</b> [1] - 964:16	<b>1993</b> [1] - 1069:9	957:10; 967:18; 969:15;	<b>3:47</b> [1] - 953:4
<b>\$900</b> [3] - 971:17;	<b>1:00</b> [3] - 946:16;	970:14, 22; 974:5	<b>3d</b> [1] - 1068:16
1037:3	989:3, 9	<b>221</b> [1] - 1072:11	
<b>0</b>	<b>2</b>	<b>225</b> [1] - 966:7	<b>4</b>
<b>0005</b> [1] - 953:14	<b>2</b> [10] - 924:20; 956:6,	<b>229</b> [3] - 971:24;	<b>4</b> [5] - 952:14; 961:18;
<b>0094</b> [1] - 923:3	18; 973:14; 974:5;	972:6, 21	962:8; 985:17; 1050:24
<b>1</b>	982:8; 1017:21; 1050:9,	<b>22nd</b> [1] - 968:20	<b>400</b> [1] - 968:4
<b>1</b> [7] - 929:8; 983:13;	20; 1066:20	<b>23</b> [10] - 955:4, 25;	<b>401</b> [2] - 968:5; 981:24
988:6; 1046:19; 1050:7,	<b>2-E-mails</b> [1] - 967:24	958:3; 965:7; 970:23;	<b>404</b> [1] - 951:19
18; 1066:19	<b>20</b> [4] - 938:11;	972:25; 1017:23;	<b>430</b> [1] - 1067:2
<b>10</b> [4] - 926:17; 953:4;	955:23; 956:1; 1008:9	1036:22; 1037:1	<b>4:10</b> [1] - 1066:20
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, : 14 CR 0094  
v. : U.S. Courthouse  
JOSEPH VALERIO, : Central Islip, N.Y.  
Defendant. : TRANSCRIPT OF TRIAL  
November 13, 2014  
-----X 9:30 a.m.

BEFORE:

HONORABLE JOSEPH F. BIANCO, U.S.D.J.  
and a jury

APPEARANCES:

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Proceedings recorded by mechanical stenography.  
Transcript produced by computer-assisted transcription.



## Jury Charge

1080

1 (Case called.)  
 2 (Appearances noted.)  
 3 THE COURT: Good morning. All right. All the  
 4 jurors are here. So are we ready to proceed with the  
 5 instructions.  
 6 MR. KABRAWALA: Yes, Judge.  
 7 MR. LAPINTA: Yes, your Honor.  
 8 THE COURT: Let's bring them in.  
 9 My practice with the alternates is to tell them  
 10 to go home and continue with their lives and not to  
 11 discuss the case with anyone and not read anything about  
 12 the case.  
 13 MR. KABRAWALA: That is acceptable to us, your  
 14 Honor.  
 15 MR. LATO: That is acceptable to us, your Honor.  
 16 (Whereupon, the jury at this time enters the  
 17 courtroom.)  
 18 THE COURT: Good morning, members of the jury.  
 19 We, as you know will now continue with my instructions to  
 20 you on the law and then you will begin your deliberations.  
 21 As you will recall I gave you part one. I'm now  
 22 going go to part two. As I said yesterday even though I  
 23 divided it up yesterday in two parts, obviously you are to  
 24 consider it as a whole together. I'm estimating it will  
 25 take an hour-and-a-half. If you need a break at any point

## Jury Charge

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1 I'll stop and I'll give everybody a break. Maybe I'll  
 2 give the court reporter a break if I think it is going on  
 3 too long.  
 4 Part two. The legal elements of the charged  
 5 crimes.  
 6 I will now turn to the second part of this  
 7 charge, and I will as I indicated at the outset, and  
 8 instruct you as to the legal elements of the crimes  
 9 charged in the indictment. That is to say I will now  
 10 instruct you as to the specific elements of the crimes  
 11 charged, each of which the Government must prove beyond a  
 12 reasonable doubt to warrant a finding of guilt.  
 13 In order to place my instructions in context, I  
 14 will start by giving you a summary of the crimes charged.  
 15 They are stated in the indictment. The indictment is not  
 16 evidence; rather, it is simply the instrument by which the  
 17 charges are brought. It is an accusation. It may not be  
 18 considered by you as any evidence of the guilt of the  
 19 defendant. To the contrary, the defendant is presumed  
 20 innocent until proven guilty beyond a reasonable doubt. I  
 21 am permitting you to have the indictment solely as a  
 22 reference during your deliberations.  
 23 After summarizing the charges, I will instruct  
 24 you in detail as to the law for you to apply to each  
 25 charge in the indictment. And finally I will tell you

## Jury Charge

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1 some further rules with respect to your deliberations.  
 2 First, the summary of the indictment. The  
 3 indictment in this case contains 15 counts, or separate  
 4 charges or offenses.  
 5 Count 1 carries the defendant with conspiracy  
 6 to sexually exploit a child, namely, Jane Doe #1, who has  
 7 been identified during this trial as having the initials  
 8 SK.  
 9 Counts Two and Three charge the defendant with  
 10 sexual exploitation of a child, namely, Jane Doe #1.  
 11 Count Four charges the defendant with  
 12 transportation of child pornography, namely, images  
 13 depicting Jane Doe #1.  
 14 Count Five charges the defendant with receipt of  
 15 child pornography, namely, images depicting Jane Doe #1.  
 16 Count Six through Thirteen charge the defendant  
 17 with attempted sexual exploitation of a child, namely,  
 18 Jane Doe #1, on specific dates in 2012.  
 19 Count Fourteen charges the defendant with sexual  
 20 exploitation of a child, namely, Jane Doe #2, who has been  
 21 identified in this trial as having the initials SI.  
 22 Count Fifteen charges the defendant with  
 23 possession of child pornography.  
 24 You must consider each count separately and  
 25 return a verdict based only upon the evidence as it

## Jury Charge

1083

1 relates to that specific count. Whether you find the  
 2 defendant not guilty or guilty as to one offense should  
 3 not affect your verdict as to any other offense charged.  
 4 Your verdict as to each count must be unanimous.  
 5 I have summarized the counts in the indictment  
 6 simply to give you an overview of the charges. In your  
 7 deliberations as to each count you should refer to the  
 8 exact text of the indictment bearing in mind at all times  
 9 the indictment is merely an accusation and not evidence  
 10 against the defendant.  
 11 I will now explain to you the law that applies  
 12 to each of the counts in the indictment, beginning with  
 13 Counts Two and Fourteen, and then addressing the other  
 14 charges in the indictment.  
 15 As you will hear in a moment, I will discuss  
 16 certain counts together, because certain counts charge the  
 17 defendant with violations of the same statute, but allege  
 18 the violation occurred on different dates, or, with  
 19 respect to Count Fourteen, with respect to different  
 20 victims. However, I caution you that you must consider  
 21 each count separately.  
 22 So I will start with Counts Two and Fourteen:  
 23 Sexual exploitation of a child.  
 24 Counts Two and Fourteen of the indictment charge  
 25 the defendant with sexual exploitation of a child.

<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1084</b></p> <p>1 Count Two of the indictment reads as follows:</p> <p>2 Reading from the indictment.</p> <p>3 On or about and between April 1, 2012, and</p> <p>4 November 1, 2012, both dates being approximate and</p> <p>5 inclusive, within the Eastern District of New York and</p> <p>6 elsewhere, the defendant Joseph Valerio, together with</p> <p>7 others did knowingly and intentionally, employ, use,</p> <p>8 persuade, induce, entice and coerce a minor, to wit, Jane</p> <p>9 Doe #1 to engage in sexually explicit conduct for the</p> <p>10 purpose of producing one or more visual depictions of such</p> <p>11 conduct, knowing and having reason to know that such</p> <p>12 visual depictions would be transported and transmitted</p> <p>13 using a means and facility of interstate and foreign</p> <p>14 commerce and which were in and affecting interstate and</p> <p>15 foreign commerce which visual depictions were produced and</p> <p>16 transmitted using materials that had been mailed, shipped</p> <p>17 and transported in and affecting interstate and foreign</p> <p>18 commerce by any means, to wit, one or more mobile</p> <p>19 telephones, digital cameras and digital media disks, and</p> <p>20 such visual depictions were actually transported and</p> <p>21 transmitted using a means and facility of interstate and</p> <p>22 foreign commerce and which were in and affecting</p> <p>23 interstate and foreign commerce.</p> <p>24 Count Fourteen of the indictment reads as</p> <p>25 follows:</p>	<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1086</b></p> <p>1 visual depiction of such conduct shall be guilty of a</p> <p>2 crime if such person knows or has reason to know that such</p> <p>3 visual depiction will be transported or transmitted, in or</p> <p>4 affecting interstate or foreign commerce or mailed, if</p> <p>5 that visual depiction was produced or transmitted using</p> <p>6 materials that have been mailed, shipped or transported in</p> <p>7 or affecting interstate or foreign commerce by any means,</p> <p>8 including by computer, or if such visual depiction has</p> <p>9 actually been transported or transmitted in or affecting</p> <p>10 interstate or foreign commerce or mailed, end quote.</p> <p>11 I'll move to the elements of the offense.</p> <p>12 In order to prove the defendant guilty of</p> <p>13 sexually exploiting a child the Government must prove each</p> <p>14 of the following three elements beyond a reasonable doubt.</p> <p>15 First: That the individual with the initials SK</p> <p>16 who is identified as Jane Doe #1 in Count Two of the</p> <p>17 indictment and the individual with the initials SI who is</p> <p>18 identified as Jane Doe #2 in Count 14 of the indictment,</p> <p>19 were under the age of 18 when the visual depictions were</p> <p>20 made;</p> <p>21 Second: That the defendant used or employed or</p> <p>22 persuaded or induced or enticed or coerced SK and SI to</p> <p>23 take part in sexually explicit conduct for the purpose of</p> <p>24 producing or transmitting a visual depiction of that</p> <p>25 conduct, and.</p>
<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1085</b></p> <p>1 On or about and between September 10, 2010 and</p> <p>2 January 19, 2011, both dates being approximate and</p> <p>3 inclusive, within the Eastern District of New York and</p> <p>4 elsewhere, the defendant Joseph Valerio did knowingly and</p> <p>5 intentionally employ, use, persuade, induce, entice and</p> <p>6 coerce a minor, to wit, Jane Doe #2, an individual whose</p> <p>7 identity is known to the grand jury, to engage in sexually</p> <p>8 explicit conduct, for the purpose of producing one or more</p> <p>9 visual depictions of such conduct which visual depictions</p> <p>10 were produced and transmitted using materials that had</p> <p>11 been mailed, shipped and transported in and affecting</p> <p>12 interstate and foreign commerce by any means, to with: One</p> <p>13 or more digital cameras, memory cards and computer</p> <p>14 equipment, and such visual depictions were actually</p> <p>15 transported and transmitted using a means and facility of</p> <p>16 interstate and foreign commerce and which were in and</p> <p>17 affecting interstate and foreign commerce.</p> <p>18 Counts Two and Fourteen of the indictment charge</p> <p>19 the defendant with violating section 2251(a) of Title 18</p> <p>20 of the United States Code. That section provides in</p> <p>21 relevant part, now quoting from the statute, any person</p> <p>22 would employs, uses, persuades, induces, entices or</p> <p>23 coerces any minor to engage in any sexually explicit</p> <p>24 conduct for the purpose of producing any visual depiction</p> <p>25 of such conduct or for the purpose of transmitting a live</p>	<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1087</b></p> <p>1 Third: That the visual depiction was mailed or</p> <p>2 actually transported or transmitted in or affecting</p> <p>3 interstate or foreign commerce or that the defendant knew</p> <p>4 or had reason to know that the visual depiction would be</p> <p>5 mailed or transported or transmitted in or affecting</p> <p>6 interstate or foreign commerce or that the visual</p> <p>7 depiction was produced using materials that had been</p> <p>8 mailed or transported in or affecting interstate or</p> <p>9 foreign commerce. I will explain each of the elements in</p> <p>10 more detail.</p> <p>11 First element of sexual exploitation of a child:</p> <p>12 Age of minor.</p> <p>13 The first element of Count Two that the</p> <p>14 Government must prove beyond a reasonable doubt is that SK</p> <p>15 was less than 18 years of age at the time of the acts</p> <p>16 alleged in the indictment. And with respect to Count</p> <p>17 Fourteen, the Government must prove beyond a reasonable</p> <p>18 doubt that SI was less than 18 years old at the time of</p> <p>19 the acts alleged in the indictment.</p> <p>20 Second element of sexual exploitation of a</p> <p>21 child: Visual depiction of sexually explicit conduct.</p> <p>22 The second element of Count 2 that the</p> <p>23 Government must prove beyond a reasonable doubt that the</p> <p>24 defendant, together with others, used or employed or</p> <p>25 persuaded or induced or enticed or coerced SK to take part</p>



<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1088</b></p> <p>1 in sexually explicit conduct for the purpose of producing</p> <p>2 or transmitting a visual depiction of that conduct.</p> <p>3 As I will explain in greater detail in a few</p> <p>4 moments, the Government can meet its burden of proof on</p> <p>5 Count 2 by proving that the defendant did the acts charged</p> <p>6 himself, or by proving that he aided and abetted another</p> <p>7 person to sexually exploit SK.</p> <p>8 As to Count 14 the Government must prove beyond</p> <p>9 a reasonable doubt that the defendant used or employed or</p> <p>10 persuaded or induced or enticed or coerced SI to take part</p> <p>11 in sexually explicit conduct for the purpose of producing</p> <p>12 or transmitting a visual depiction of that conduct.</p> <p>13 The words "used" and "employed" are words of</p> <p>14 common usage, and I instruct you to interpret these words</p> <p>15 by using your common sense. The words persuade, induce</p> <p>16 and entice are in effect synonyms, which convey the idea</p> <p>17 of leading or moving another by persuasion or influence,</p> <p>18 as to some action, state of mind, etc., or to bring about,</p> <p>19 produce or cause.</p> <p>20 The word "induce" also means to stimulate the</p> <p>21 occurrence of or cause.</p> <p>22 The word "coerce" means to compel by force,</p> <p>23 intimidation or authority, without regard for individual</p> <p>24 desire or volition.</p> <p>25 The word "producing" in this context means</p>	<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1090</b></p> <p>1 depiction which displays or brings to view to attract</p> <p>2 notice to the genitals or pubic area of children in order</p> <p>3 to excite lustfulness or sexual stimulation in the viewer.</p> <p>4 Not every exposure of the genital or pubic area</p> <p>5 constitutes a lascivious exhibition. You should consider</p> <p>6 the following questions:</p> <p>7 A. Whether the focal point of the visual</p> <p>8 depiction is on the child's genitals or pubic area or</p> <p>9 whether there is some other focal area;</p> <p>10 B. Whether the setting of the visual depiction</p> <p>11 makes it appears to be sexually suggestive, for example,</p> <p>12 in a place or pose generally associated with sexual</p> <p>13 activity;</p> <p>14 C. Whether the child is displayed in an</p> <p>15 unnatural pose, or in inappropriate attire, considering</p> <p>16 the age of the child;</p> <p>17 D. Whether the child is fully or partially</p> <p>18 clothed, or nude, although nudity is not in and of itself</p> <p>19 lascivious;</p> <p>20 E. Whether the visual depiction suggests sexual</p> <p>21 coyness or a willingness to engage in sexual activity.</p> <p>22 F. Whether the visual depiction is intended or</p> <p>23 designed to elicit a sexual response in the viewer.</p> <p>24 Of course in order for a visual depiction to be</p> <p>25 lascivious all six factors need to the to be present and</p>
<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1089</b></p> <p>1 producing, directing, manufacturing, issuing, publishing,</p> <p>2 or advertising.</p> <p>3 A "visual depiction" includes any photograph,</p> <p>4 film, video or picture, including undeveloped film and</p> <p>5 videotape, and data stored on computer disk or by</p> <p>6 electronic means which is capable of conversion into a</p> <p>7 visual image.</p> <p>8 A "visual depiction" includes videos and images</p> <p>9 transmitted via live web cam even where such images are</p> <p>10 not stored permanently.</p> <p>11 You may consider all of the evidence concerning</p> <p>12 the defendant's conduct when deciding whether the</p> <p>13 Government has proven that the defendant acted for the</p> <p>14 purpose of producing or transmitting a visual depiction of</p> <p>15 the sexually explicit conduct, or aiding and abetting</p> <p>16 another person to do so, as the case may be for Count 2.</p> <p>17 Definition of sexually explicit.</p> <p>18 Sexual explicit conduct means actual or</p> <p>19 simulated sexual intercourse, including genital-genital,</p> <p>20 oral-genital, digital-genital, anal-genital, or oral-anal,</p> <p>21 whether between persons of the same or opposite sex;</p> <p>22 bestiality; masturbation; sadistic; or masochistic abuse</p> <p>23 or lascivious exhibition or the genitals or pubic area of</p> <p>24 any person.</p> <p>25 The term "lascivious exhibition" means a</p>	<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1091</b></p> <p>1 the list of factors is not mandatory, exclusive or</p> <p>2 exhaustive. Instead, you must determine whether the</p> <p>3 visual depiction is lascivious based on its overall</p> <p>4 content, taking into account the age of the minor. It is</p> <p>5 for you to decide the weight or lack of weight to be given</p> <p>6 to these or any other factors you find relevant.</p> <p>7 In deciding whether the Government has proven</p> <p>8 that the defendant acted for the purpose of producing or</p> <p>9 transmitting a visual depiction of the sexually explicit</p> <p>10 conduct, you may consider all of the evidence concerning</p> <p>11 his conduct. While the Government must prove that he</p> <p>12 acted with the purpose of producing a visual depiction of</p> <p>13 sexually explicit conduct, it is not required that the</p> <p>14 Government prove that the visual depiction of that conduct</p> <p>15 was actually produced.</p> <p>16 The third element of sexual exploitation of a</p> <p>17 child: Effect on interstate commerce.</p> <p>18 The third element of sexual exploitation of a</p> <p>19 child that the Government must prove beyond a reasonable</p> <p>20 doubt is that the visual depiction was transported or</p> <p>21 transmitted in or affecting interstate or foreign commerce</p> <p>22 or using a facility of interstate and foreign commerce or</p> <p>23 that the defendant knew or had reason to know that the</p> <p>24 visual depiction would be mailed or transported in or</p> <p>25 affecting interstate or foreign commerce, or that the</p>

**Jury Charge****1092**

1 visual depiction was produced using materials that had  
 2 been mailed, shipped and transported in and affecting  
 3 interstate and foreign commerce.  
 4 Simply stated, the phrase "transported or  
 5 transmitted in or affecting interstate or foreign  
 6 commerce" means that the materials used to produce the  
 7 visual depiction had previously moved from one state to  
 8 another or between the United States and another country.  
 9 I instruct you that transmissions of photographs  
 10 or video by means of the internet constitutes  
 11 transportation in interstate commerce. However, you must  
 12 find beyond a reasonable doubt that the specific depiction  
 13 in question was actually transmitted by means of the  
 14 internet, or that the defendant knew or had reason to know  
 15 that the visual depiction would be transmitted by the  
 16 internet.  
 17 Additionally, if a visual depiction of sexually  
 18 explicit conduct as I have defined that term, is stored on  
 19 a digital camera, other type of recording device or  
 20 digital media disk, and the camera, recording device or  
 21 digital media disk crosses from one state to another, that  
 22 is sufficient to satisfy the interstate commerce element.  
 23 Furthermore, it is sufficient to satisfy the  
 24 interstate or foreign commerce element if the visual  
 25 depiction of sexually explicit conduct is recorded or

**Jury Charge****1093**

1 stored on a device that was made either outside of the  
 2 State of New York or in a foreign country.  
 3 I'm now moving to Count 3. Sexual exploitation  
 4 of a child outside the United States.  
 5 Count 3 of the indictment charges the defendant  
 6 with sexual exploitation of a child, namely Jane Doe #1,  
 7 occurring outside of the United States.  
 8 Count 3 of the indictment reads as follows.  
 9 Reading from the indictment.  
 10 On or about and between April 1, 2012, and  
 11 November 1, 2012, both dates being approximate and  
 12 inclusive, within the Eastern District of it New York and  
 13 elsewhere, the defendant Joseph Valerio together with  
 14 others, did knowingly and intentionally employ, use,  
 15 persuade, induce, entice, and coerce a minor, to wit, Jane  
 16 Doe #1 to engage in sexually explicit conduct outside of  
 17 the United States, its territories and possessions, for  
 18 the purpose of producing one or more visual depictions of  
 19 such conduct intending that such visual depictions would  
 20 be transmitted and transmitted to the United States, its  
 21 territories and possessions, using a means and facility of  
 22 interstate and foreign commerce and mail, and which visual  
 23 depictions were actually transported and transmitted to  
 24 the United States, its territories and possessions, using  
 25 a means and facility of interstate and foreign commerce

**Jury Charge****1094**

1 and mail.  
 2 Count 3 of the indictment charges the defendant  
 3 with violating section 2251(c) of Title 18 of the United  
 4 States Code. That section provides in relevant part,  
 5 quoting the statute.  
 6 Any persons who employs, uses, persuades,  
 7 induces, entices or coerces any minor to engage in or who  
 8 has a minor assist any other person to engage in, any  
 9 sexually explicit conduct outside the United States, its  
 10 territories or possessions for the purpose of producing  
 11 any visual depiction of such conduct, intending such  
 12 visual depiction to be transported to the United States,  
 13 its territories or possessions, by any means, including by  
 14 using any means or facility of interstate or foreign  
 15 commerce or mail, or transporting such visual depiction to  
 16 the United States, its territories or possessions, by any  
 17 means, including by using any means or facility of  
 18 interstate or foreign commerce or mail shall be guilty of  
 19 a crime.  
 20 In order to prove the defendant guilty of  
 21 sexually exploiting a child, the Government must prove  
 22 each of the follow four elements beyond a reasonable  
 23 doubt.  
 24 First that the individual with the initials SK  
 25 who was identified in the indictment as Jane Doe #1 was

**Jury Charge****1095**

1 under the age of 18 years at the time of the acts alleged  
 2 in the indictment.  
 3 Second, that the defendant, together with other  
 4 person, either employed, used, persuaded, induced,  
 5 enticed, or coerced S.K. to engage in sexually explicit  
 6 conduct outside the United States, its territories or  
 7 possessions as I've already defined those materials to  
 8 you, or (b), had S.K. assist another person or persons to  
 9 engage in sexually explicit conduct outside the United  
 10 States, its territories, or possessions;  
 11 Third, that the defendant did so for the purpose  
 12 of producing a visual depiction of such conduct, as I have  
 13 already defined the term "visual depiction" and;  
 14 Fourth, that the defendant, (a) intended such  
 15 visual depiction to be transported to the United States,  
 16 its territories, or possessions by any means, including by  
 17 using mail or by any means or facility of interstate or  
 18 foreign commerce or (b) the defendant did transport or  
 19 aided and abetted another person in transporting such  
 20 visual depiction to the United States, its territories or  
 21 possessions by any means, including by using mail or any  
 22 means of facility of interstate or foreign commerce, as I  
 23 have already defined those terms for you.  
 24 As I mentioned earlier and as I will explain in  
 25 greater detail momentarily, the Government can meet its

## Jury Charge

1096

1 burden of proof on Count 3 by proving that the defendant  
2 did the acts charged himself, or by proving that he aided  
3 and abetted another person to carry out such acts.

4 If you find from your consideration of all the  
5 evidence that the Government as proved each of these  
6 elements beyond a reasonable doubt as to Count 3, then you  
7 should find the defendant guilty of that charge.

8 If, on the other hand, you find from your  
9 consideration of all the evidence that the Government has  
10 failed to prove any one of these elements beyond a  
11 reasonable doubt as to Count 3, then you should find the  
12 defendant not guilty of that charge.

13 I will now give you an instruction regarding  
14 aiding and abetting.

15 With respect to certain counts in the  
16 indictment, I instruct you that the Government can meet  
17 its burden of proof either by proving that the defendant  
18 did the acts charged himself or by proving that he aided  
19 and abetted another person in carrying out the acts  
20 charged: those counts are Counts 2 and 3, charging the  
21 defendant with sexual exploitation of a child; Count 4,  
22 charging the defendant with transportation of child  
23 pornography; and Count 5, charging the defendant with  
24 receipt of child pornography.

25 I have already instructed you on Counts 2 and 3

## Jury Charge

1097

1 and I will instruct you on Counts 4 and 5 in a moment.

2 Let me now take time now to explain to you the  
3 law concerning aiding and abetting.

4 The Government is relying on aiding and abetting  
5 under section 2(a) of Title 18 of the United States Code  
6 which provides that, reading from the statute, whoever  
7 commits an offense against the United States or aids,  
8 abets, counsels, commands, induces or procures its  
9 commission, is punishable as a principal, end of quote.

10 Accordingly, even if the defendant did not  
11 personally do every act constituting an offense you may  
12 find that he committed that offense if the Government  
13 proves beyond a reasonable doubt that he aided and abetted  
14 the offense. This means that if you find that the  
15 defendant knowingly and willfully aided and abetted  
16 another person in the commission of a crime, he is as  
17 guilty as if he personally committed it.

18 Under the aiding and abetting statute, it is not  
19 necessary for the Government to show that a defendant  
20 himself physically committed the crime with which he is  
21 charged in order for the Government to sustain its burden  
22 of proof.

23 A person who aids or abets another to commit an  
24 offense is just as guilty of that offense as if he  
25 committed it himself. The essence of aiding and abetting

## Jury Charge

1098

1 is the intentionally and knowing participation in the  
2 unlawful act by furthering it in some way.

3 Before you can convict a defendant on the ground  
4 that he aided and abetted the commission of the crimes  
5 charged, you must first find beyond a reasonable doubt  
6 that another person committed that crime.

7 In order to aid or abet another to commit a  
8 crime, it is necessary that the defendant willfully and  
9 knowingly associate himself in some way with the criminal  
10 venture, that he participate in it out of a desire to make  
11 the crime succeed, that is, a defendant must have the  
12 specific intent of furthering the criminal offense through  
13 some action on his part.

14 The mere presence of a defendant where a crime  
15 is being committed, even coupled with knowledge that a  
16 crime is being committed or the mere acquiescence by the  
17 defendant in the criminal conduct of others, even with  
18 guilty knowledge, is not sufficient to establish aiding  
19 and abetting. An aider and abettor must have some  
20 interest in the criminal venture. That interest need not  
21 be a financial one, but you may consider the presence or  
22 absence of a financial interest in making your  
23 determination.

24 In other words, if one, fully aware of what he  
25 is doing, plays a significant role in facilitating a

## Jury Charge

1099

1 transaction prohibited by law, he is equally guilty with  
2 the person who directly performs the illegal acts, even  
3 though the latter played a much greater or major part in  
4 the preparation of the crime.

5 To determine whether the defendant aided and  
6 abetted the commission of the crime charged, ask  
7 yourselves these questions.

8 Did he participate in the crime charged as  
9 something he wished to bring about?

10 Did he associate himself with the criminal  
11 venture knowingly and willfully?

12 Did he seek by his actions to make the criminal  
13 venture succeed?

14 If your answer to each of these questions is  
15 "yes" then the defendant is an aider and abettor and  
16 therefore guilty of the crime charged just as if he  
17 himself had actually committed it.

18 If on the other hand your answer as to any of  
19 these questions is "no," then the defendant is not an  
20 aider and abettor under 18 USC section 2(a), and you must  
21 find him guilty of the crime under consideration as an  
22 aider and abettor under section 2(a).

23 I'm now moving to Counts 6, 7, 8, 9, 10, 11, 12,  
24 and 13: Attempted sexual exploitation of a child.

25 I will now explain to you the law that applies

**Jury Charge****1100**

1 to each of the Counts 6 through 13 of the indictment, each  
 2 of which charges the defendant with attempted sexual  
 3 exploitation of a child, namely, Jane Doe #1, on a  
 4 particular date. Count 6 of the indictment reads as  
 5 follows:

6 On or about January 23, 2012, within the Eastern  
 7 District of New York and elsewhere, the defendant Joseph  
 8 Valerio, together with others, did knowingly and  
 9 intentionally attempt to employ, use, persuade, induce,  
 10 entice, and coerce a minor, to wit, Jane Doe #1, to engage  
 11 in sexually explicit conduct for the purpose of producing  
 12 one or more visual depictions of such conduct, knowing and  
 13 having reason to know that such visual depictions would be  
 14 transported and transmitted using a means and facility of  
 15 interstate and foreign commerce and which were in and  
 16 affecting interstate and foreign commerce, which visual  
 17 depictions were produced and transmitted using materials  
 18 that had been mailed, shipped and transported and  
 19 affecting interstate and foreign commerce by any means,  
 20 including by one or more mobile telephones, digital  
 21 cameras, digital media disks and computer and such visual  
 22 depictions were actually transported and transmitted using  
 23 a means and facility of interstate and foreign commerce  
 24 and which were in and affecting interstate and foreign  
 25 commerce contrary to Title 18 U.S. Code Section 2251(a),

**Jury Charge****1101**

1 end quote.

2 Counts 7 through 13 are identical to Count 6,  
 3 except each count charges the defendant with attempted  
 4 sexual exploitation of a child on a separate date. So  
 5 I'll not read the language for each of those counts. I'll  
 6 tell you what each count corresponds to, the date, I'll  
 7 give you the count and the approximate date as alleged in  
 8 the indictment with respect to the sexual exploitation of  
 9 a child.

10 Count 7, January 24, 2012.

11 Count 8, March 28, 2012.

12 Count 9, April 4, 2012.

13 Count 10, July 16, 2012.

14 Count 11, July 22, 2012.

15 Count 12, September 6, 2012.

16 Count 13, September 27, 2012.

17 Counts 6 through 13 of the indictment charge the  
 18 defendant with violating section 2251(e) of Title 18 of  
 19 the United States Code. That section provides, in  
 20 relevant part: Any individual who attempts to violate 18  
 21 U.S.C. Section 2251(a) which makes it a crime to sexually  
 22 exploit a minor shall be guilty of a crime, end of quote.

23 In order to prove that the defendant attempted  
 24 to exploit a child, the Government must prove beyond a  
 25 reasonable doubt the following two elements:

**Jury Charge****1102**

1 First: That the defendant intended to commit  
 2 the crime of sexual exploitation of a child, namely, the  
 3 individual identified as Jane Doe #1.

4 I have already instructed you on the elements of  
 5 the offense of sexual exploitation of a child and those  
 6 instructions apply equally here to these counts.

7 Second: That the defendant willfully took some  
 8 action that was a substantial step in an effort to bring  
 9 about or accomplish the crime.

10 Mere intention to commit a specific crime does  
 11 not amount to an attempt. In order to convict the  
 12 defendant of an attempt, you must find beyond a reasonable  
 13 doubt that the defendant intended to commit the crime  
 14 charged and that he took some action which was a  
 15 substantial step toward the commission of crime.

16 In determining whether a defendant's actions  
 17 amounted to a substantial step toward the commission of  
 18 the crime, it is necessary to distinguish between mere  
 19 preparation on the one hand and the actual doing of the  
 20 criminal deed on the other.

21 Mere preparation which may consist of planning  
 22 the offense or of devising, obtaining, or arranging a  
 23 means for its commission is not an attempt, although some  
 24 preparations may amount to an attempt. The acts of a  
 25 person who intends to commit a crime will constitute an

**Jury Charge****1103**

1 attempt where the acts themselves clearly indicate an  
 2 intent to willfully commit the crime, and where the acts  
 3 are a substantial step in a course of conduct planned to  
 4 culminate in the commission of the crime.

5 Factual or legal impossibility is not a defense  
 6 to a charge of attempting to commit a crime if the crime  
 7 could have been committed, had the relevant factual or  
 8 legal circumstances been as the defendant believed them to  
 9 be.

10 In other words, a person is guilty of an attempt  
 11 to commit a crime if, acting with the kind of culpability  
 12 otherwise required for the commission of the crime, he  
 13 intentionally engages in conduct which would constitute  
 14 the crime if the relevant factual and legal circumstances  
 15 were as he believed them to be.

16 To prove that the defendant attempted to  
 17 sexually exploit a child, the Government does not need to  
 18 prove that a visual depiction of sexually explicit  
 19 conduct, terms I've already defined for you was actually  
 20 produced or transmitted.

21 Nor does the Government have to prove that the  
 22 visual depiction was actually transported or transmitted  
 23 in or affecting interstate commerce. It is sufficient for  
 24 the Government to prove that the defendant intended that  
 25 the visual depiction would be transported or transmitted

**Jury Charge****1104**

1 in or affecting interstate or foreign commerce or that the  
 2 defendant had reason to know that this transmission could  
 3 occur because it was reasonably foreseeable that the  
 4 defendant's activities would result in the depiction's  
 5 transmission in or affecting interstate commerce or that  
 6 the defendant intended to produce the visual depiction  
 7 using a device or digital media disk that had traveled in  
 8 interstate or foreign commerce; that is, a device or  
 9 digital media disk produced somewhere other than the state  
 10 in which it was to be used or which was transported across  
 11 state lines or an international border.

12 I'm now moving to Count 1, conspiracy to  
 13 sexually exploit a child.

14 Count 1 of the indictment charges the defendant  
 15 with conspiracy to sexually exploit a child, namely, Jane  
 16 Doe #1. Count 1 of the indictment reads as follows.  
 17 Quoting from the indictment.

18 On or about and between April 1, 2012 and  
 19 November 1, 2012, both dates being approximate and  
 20 inclusive, within the Eastern District of New York and  
 21 elsewhere, the defendant Joseph Valerio together with  
 22 others, did knowingly and intentionally conspire to  
 23 employ, use, persuade, induce, entice and coerce a minor,  
 24 to wit, Jane Doe #1, an individual whose identity is known  
 25 to the grand jury, to engage in sexually explicit conduct

**Jury Charge****1105**

1 for the purpose of producing one or more visual depictions  
 2 of such conduct, knowing and having reason to know that  
 3 such visual depictions would be transported and  
 4 transmitted using a means and facility of interstate and  
 5 foreign commerce and which were in and affecting  
 6 interstate and foreign commerce, which visual depictions  
 7 were produced and transmitted using materials that had  
 8 been mailed, shipped and transported in and affecting  
 9 interstate and foreign commerce by any means, to wit: One  
 10 or more mobile telephones, digital cameras and digital  
 11 media disks, and such visual depictions were actually  
 12 transported and transmitted using a means and facility of  
 13 interstate and foreign commerce and which were in and  
 14 affecting interstate and foreign commerce, contrary to  
 15 Title 18, United States Code, Section 2251(a), end quote.

16 Count 1 of the indictment charges the defendant  
 17 with violating section 2251(e) of Title 18 of the United  
 18 States Code, that section provides in relevant part:  
 19 Quoting the statute. Any individual who conspires to  
 20 violate this section, 18 U.S.C. 2251(a), which makes it a  
 21 crime to sexually exploit a minor shall be guilty of a  
 22 crime, end of quote.

23 I have already instructed you on the elements of  
 24 the offense of sexual exploitation of a child and those  
 25 instructions equally apply here even though I will not

**Jury Charge****1106**

1 repeat them now.

2 The essence of the charge of conspiracy is an  
 3 understanding or agreement between or among two or more  
 4 persons that they will act together to accomplish a common  
 5 objective that they know is unlawful.

6 You should understand that a conspiracy is an  
 7 offense separate from the commission of any offense that  
 8 may have been committed pursuant to the conspiracy. That  
 9 is because the formation of a conspiracy, of a partnership  
 10 for criminal purposes, is in and of itself a crime. Thus,  
 11 if a conspiracy exists, even if it should fail in  
 12 achieving its purpose, it is still punishable as a crime.  
 13 Also, you may find the defendant guilty of the crime of  
 14 conspiracy even if the substantive crime that was the  
 15 object of that conspiracy -- here, sexual exploitation  
 16 of a child -- was not actually committed.

17 There are two elements of the crime of  
 18 conspiracy and the Government must prove each of the  
 19 following two elements beyond a reasonable doubt.

20 First: That two or more persons entered the  
 21 unlawful agreement charged in the indictment -- in this  
 22 case, the sexual exploitation of a child.

23 Second: That the defendant became a member of  
 24 the conspiracy with knowledge of its criminal goal or  
 25 goals and with the intent to help the conspiracy achieve

**Jury Charge****1107**

1 its criminal goals by his own actions.

2 Let me start with the first element. A  
 3 conspiracy is a combination or agreement of two or more  
 4 persons to accomplish an unlawful purpose.

5 In order for the Government to satisfy this  
 6 element, you need not find that the alleged members of the  
 7 conspiracy met together and entered into any express or  
 8 formal agreement to sexually exploit a child. Similarly  
 9 you need not find that the alleged conspirators stated in  
 10 words or writing what the scheme was, its object or  
 11 purpose, or every precise detail of the crime or the means  
 12 by which its object or purpose was to be accomplished. In  
 13 addition, the Government need not prove that the defendant  
 14 actually committed sexual exploitation of a child.

15 The Government must, however, prove that there  
 16 was a mutual understanding either spoken or unspoken  
 17 between two or more people to cooperate with each other to  
 18 accomplish an unlawful act, specifically sexual  
 19 exploitation of a child.

20 Since conspiracy is by its nature characterized  
 21 by secrecy, direct proof may not be available. You may,  
 22 therefore, infer the existence of the conspiracy from the  
 23 circumstances of this case and in the conduct of the  
 24 parties involved. In a very real sense, then, in the  
 25 context of conspiracy cases, actions often speak louder



## Jury Charge

1108

1 than words. In this regard, you may, in determining  
 2 whether an agreement existed here, consider the actions  
 3 and statements of all those who are found to be  
 4 participants as proof that a common design existed on the  
 5 part of the persons charged to act together to accomplish  
 6 an unlawful purpose.

7 The second element the Government must prove  
 8 beyond a reasonable doubt is that a defendant became a  
 9 member of the charged conspiracy with knowledge of its  
 10 goal or goals and intended by his actions to help it  
 11 succeed. The key question is whether the defendant joined  
 12 the conspiracy with an awareness of at least some of the  
 13 basic aims and purposes of the unlawful agreement.  
 14 Whether the defendant acted knowingly and willfully may be  
 15 proven by the defendant's conduct and by all of the facts  
 16 and circumstances surrounding the case.

17 You may ask yourselves whether the defendant  
 18 participated in the conspiracy with knowledge of its  
 19 unlawful purpose and with the specific intent of  
 20 furthering its objective. In that regard it has been said  
 21 for a defendant to be deemed a participant in a conspiracy  
 22 he must have had some stake in the outcome. It is  
 23 important for you to note that a defendant's participation  
 24 in the conspiracy may be established by independent  
 25 evidence of his or her own acts or statements, as well as

## Jury Charge

1110

1 is not required that a person be a member of the  
 2 conspiracy from its very start.

3 I want to caution you that the defendant's mere  
 4 presence at the scene of an alleged crime does not by  
 5 itself make him a member of the conspiracy.

6 Similarly, mere association with one or more  
 7 members of the conspiracy does not automatically make the  
 8 defendant a member. A person may know or be friendly with  
 9 a criminal without being a criminal himself or herself.

10 I also want to caution you that mere knowledge  
 11 or acquiescence without participation in the unlawful plan  
 12 is not sufficient. The fact that the acts of a defendant  
 13 without knowledge merely happened to further the purpose  
 14 or objectives of the conspiracy does not make the  
 15 defendant a member of the conspiracy. More is required  
 16 under the law. What what is necessary is that the  
 17 defendant must have participated with knowledge of at  
 18 least some of the purposes or objectives of the  
 19 conspiracy, and with the intention of aiding in the  
 20 accomplishment of those unlawful ends.

21 In sum, a defendant with an understanding of the  
 22 unlawful character of the conspiracy must have  
 23 intentionally engaged, advised or assisted in it for the  
 24 purpose of furthering the illegal undertaking. He thereby  
 25 becomes a knowing and willing participant in the unlawful

## Jury Charge

1109

1 those of other alleged co-conspirators, and the reasonable  
 2 inferences which may be drawn from them.

3 The defendant's knowledge is a matter of  
 4 inference from the facts proved. In that connection, I  
 5 instruct you that to become a member of the conspiracy,  
 6 the defendant need not have known the identities of each  
 7 and every other member of the conspiracy, nor need he have  
 8 been apprised of all of their activities. Moreover, the  
 9 defendant does not need to have been informed of all the  
 10 details or the scope of the conspiracy in order to justify  
 11 an inference of knowledge on his part.

12 Furthermore, the defendant need not have joined  
 13 in all of the conspiracy's unlawful objectives.

14 The extent or duration of the defendant's  
 15 participation has no bearing on the issue of the  
 16 defendant's guilt. Indeed, each member may perform  
 17 separate and distinct acts and may perform them at  
 18 different times. Some conspirators play major roles,  
 19 while others play minor parts in the scheme. An equal  
 20 role is not what the law requires. In fact, even a single  
 21 act may be sufficient to draw the defendant within the  
 22 ambit of the conspiracy. If you find that the conspiracy  
 23 existed and if you further find that the defendant  
 24 participated in it knowingly and willfully, the extent or  
 25 degree of his participation is not material. Moreover, it

## Jury Charge

1111

1 agreement -- that is to say, a conspirator.

2 If you find that the government has proven each  
 3 of the two elements of the crime alleged in Count 1 --  
 4 conspiracy to exploit a child -- beyond a reasonable  
 5 doubt, you should find the defendant guilty on Count 1.  
 6 If the Government fails to prove any one element, you must  
 7 find the defendant not guilty as to Count 1.

8 I have admitted into evidence against the  
 9 defendant the acts and statements of others because these  
 10 acts and statements were committed by persons who the  
 11 government charges were also confederates or  
 12 co-conspirators of the defendant in the conspiracy charged  
 13 in Count 1.

14 The reason for allowing this evidence to be  
 15 received against the defendant has to do with nature of  
 16 the crime of conspiracy. A conspiracy is often referred  
 17 to as a partnership in crime. Thus, as in other types of  
 18 partnerships, when people enter into a conspiracy to  
 19 accomplish an unlawful end, each and every member becomes  
 20 an agent for the other co-conspirators in carrying out the  
 21 conspiracy.

22 Accordingly, the reasonably foreseeable acts,  
 23 declarations, statements, and omissions of any member of  
 24 the conspiracy and in furtherance of the common purpose of  
 25 the conspiracy are deemed, under the law, to be the acts

**Jury Charge**

**1112**

1 of all of the members, and all of the members of the  
2 conspiracy are deemed responsible for such acts,  
3 declarations, statements, and omissions.  
4 If you find beyond a reasonable doubt that the  
5 defendant was a member of a conspiracy charged in the  
6 indictment then any reasonably foreseeable acts done or  
7 statements made in furtherance of the conspiracy by  
8 persons also found by you to have been members of that  
9 conspiracy, may be considered against the defendant.  
10 This is so even if such acts were done and such  
11 statements were made in the defendant's absence and  
12 without his knowledge. However, before you may find that  
13 the statements or acts of a co-conspirator should be  
14 considered as tending to show the defendant's guilt you  
15 must first determine that the acts and statements were  
16 made during the existence and in furtherance of the  
17 conspiracy.  
18 Let me give you an instruction regarding  
19 "consent not a defense to sexual exploitation of a child."  
20 Whether or not the minor consented to engaging  
21 in sexually explicit conduct is irrelevant, as as the  
22 consent or voluntary participation of the minor is not a  
23 defense to the charge.  
24 Moving to Count 4, transportation of child  
25 pornography.

**Jury Charge**

**1113**

1 Count 4 of the indictment charges the defendant  
2 with transportation of child pornography, namely, images  
3 depicting Jane Doe #1. Count 4 of the indictment reads as  
4 follows:  
5 "On or about and between April 1, 2012 and  
6 November 1, 2012, both dates being approximate and  
7 inclusive, within the Eastern District of New York and  
8 elsewhere, the defendant Joseph Valerio together with  
9 others did knowingly and intentionally transport and ship,  
10 using a means and facility of interstate and foreign  
11 commerce, and in and affecting interstate and foreign  
12 commerce, one or more visual depictions, to wit, images  
13 depicting Jane Doe #1 engaged in sexually explicit  
14 conduct, the production of such visual depictions having  
15 involved the use of a minor engaging in sexually explicit  
16 conduct, and such visual depictions were of such conduct.  
17 Count 4 of the indictment charges the defendant  
18 with violating section 2252(a)(1) of Title 18 of the  
19 United States Code. That section provides in relevant  
20 part. Reading from the statute: Any person who knowingly  
21 transports or ships using any means other facility of  
22 interstate or foreign commerce or in or affecting  
23 interstate or foreign commerce by any means including by  
24 computer or mails, any visual depiction, if, (A), the  
25 producing of such visual depiction involves the use of a

**Jury Charge**

**1114**

1 minor engaging in sexually explicit conduct, and, (B),  
2 such visual depiction is of such conduct, shall be guilty  
3 of a crime end of quote.  
4 In order to prove the defendant guilty of  
5 transporting child pornography, the Government must prove  
6 each of the following elements beyond a reasonable doubt.  
7 First, that the defendant together with others,  
8 knowingly transported a visual depiction. You have  
9 already been instructed on the meaning of the term "visual  
10 depiction" and those instructions apply equally here.  
11 Second, that the visual depiction was  
12 transported in interstate or foreign commerce or the  
13 visual depiction was produced using materials that had  
14 been transported in interstate or foreign commerce or that  
15 the offense was committed in the special maritime and  
16 territorial jurisdiction of the United States.  
17 I have already instructed you what it means for  
18 a visual depiction to be actually transported in  
19 interstate or foreign commerce and they apply equally  
20 here.  
21 Third, that the production of the visual  
22 depiction involved the use of a minor engaging in sexually  
23 explicit conduct, as I've already explained that term to  
24 you and portrays that minor engaged in that conduct.  
25 Fourth, that the defendant knew that the

**Jury Charge**

**1115**

1 production of that visual depiction involved the use of a  
2 minor engaging in sexually explicit conduct and portrayed  
3 a minor engaged in that conduct.  
4 As I will explain to you in just a moment, an  
5 act is done knowingly when it is done voluntarily and  
6 intentionally and not because of accident, mistake or some  
7 other innocent reason.  
8 In this case, the term "knowingly" refers to an  
9 awareness of the sexually explicit nature of the material  
10 and to the knowledge that the visual depictions were in  
11 fact of an actual minor engaged in that sexually explicit  
12 conduct.  
13 The Government must show that the defendant had  
14 knowledge of the general nature of the contents of the  
15 material. The defendant need not have specific knowledge  
16 as to the identity or actually age of the minor depicted,  
17 but the defendant must have knowledge -- excuse me, but  
18 the defendant must have knowledge other an awareness that  
19 the material contained a visual depiction of a minor  
20 engaging in sexually explicit conduct. Such knowledge may  
21 be shown by direct or circumstantial evidence or both.  
22 Eyewitness testimony of the defendant's viewing  
23 of the material is not necessary to prove her awareness of  
24 its contents, his or her awareness of its contents; the  
25 circumstances may warrant an inference that he was aware

<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1116</b></p> <p>1 of what the material depicts. Furthermore, the</p> <p>2 defendant's belief as to the legality or illegality of the</p> <p>3 material is irrelevant.</p> <p>4 I just want to emphasize, although I've given</p> <p>5 you this instruction regarding this count, this definition</p> <p>6 of "knowingly" that I've given you applies to all counts</p> <p>7 as that term is used.</p> <p>8 I remind you that the Government can meet its</p> <p>9 burden of proof on Count 4 by proving that the defendant</p> <p>10 did the acts charged himself, or by proving that he aided</p> <p>11 and abetted another person to transport child pornography.</p> <p>12 Count 5, receipt of child pornography.</p> <p>13 Count 5 of the indictment charges the defendant</p> <p>14 with receipt of child pornography, namely, images</p> <p>15 depicting Jane Doe #1.</p> <p>16 Count 5 of the indictment reads as follows:</p> <p>17 Quoting. On or about and between April 1, 2012, and</p> <p>18 November 1, 2012, both dates being approximate and</p> <p>19 inclusive, within the Eastern District of New York and</p> <p>20 elsewhere, the defendant Joseph Valerio, together with</p> <p>21 others, did knowingly and intentionally receive one or</p> <p>22 more visual depictions, to wit, images depicting Jane Doe</p> <p>23 #1 engaged in sexually explicit conduct using a means and</p> <p>24 facility of interstate and foreign commerce and which</p> <p>25 visual depictions had been mailed and shipped and</p>	<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1118</b></p> <p>1 In order to prove the defendant guilty of</p> <p>2 receiving child pornography, the government must prove</p> <p>3 each of the following four elements beyond a reasonable</p> <p>4 doubt:</p> <p>5 First, that the defendant received a visual</p> <p>6 depiction, which term I have already defined for you and</p> <p>7 applies equally here.</p> <p>8 Second, that the visual depiction was</p> <p>9 transported in or affecting interstate or foreign</p> <p>10 commerce.</p> <p>11 Third, that the production of the visual</p> <p>12 depiction involved the use of a minor engaging in sexually</p> <p>13 explicit conduct, and portrayed that minor engaged in that</p> <p>14 conduct.</p> <p>15 Fourth, that the defendant knew that the</p> <p>16 production of the visual depiction involved the use of a</p> <p>17 minor engaged in sexually explicit conduct, and portrayed</p> <p>18 a minor engaged in that conduct.</p> <p>19 I remind you that the government can meet its</p> <p>20 burden of proof of count five by proving that the</p> <p>21 defendant did the acts charged himself, or by proving that</p> <p>22 he aided and abetted another person to receive child</p> <p>23 pornography.</p> <p>24 The first element of receipt of child</p> <p>25 pornography, receiving.</p>
<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1117</b></p> <p>1 transported in and affecting interstate and foreign</p> <p>2 commerce, the, the production of such visual depictions</p> <p>3 having involved the use of one or more minors engaging in</p> <p>4 sexually explicit conduct and such visual depictions were</p> <p>5 of such conduct, end quote.</p> <p>6 Count 5 of the indictment charges the defendant</p> <p>7 with violating section 2252(a)(2) of Title 18 of the</p> <p>8 United States Code. That section provides in relevant</p> <p>9 part. Quoting from the statute.</p> <p>10 Any person who knowingly receives, or</p> <p>11 distributes any visual depiction, using any means or</p> <p>12 facility of interstate or foreign commerce or that has</p> <p>13 been mailed or has been shipped or transported in or</p> <p>14 affecting interstate or foreign commerce or which contains</p> <p>15 materials which have been mailed or so shipped or</p> <p>16 transported by any means including by computer, or</p> <p>17 knowingly reproduces any visual depiction for distribution</p> <p>18 using any means or facility of interstate or foreign</p> <p>19 commerce or in or affecting interstate or foreign commerce</p> <p>20 or through the mails, if (A) the producing of such visual</p> <p>21 depiction involved the use of a minor engaging in sexually</p> <p>22 explicit conduct and (B) such visual depiction is of such</p> <p>23 conduct, shall be guilty of a crime.</p> <p>24 (Continued)</p> <p>25</p>	<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1119</b></p> <p>1 The first element of count five that the</p> <p>2 government must prove beyond a reasonable doubt that the</p> <p>3 defendant knowingly received a visual depiction.</p> <p>4 You have already been instructed on the meaning</p> <p>5 of the term visual depiction, and that instruction applies</p> <p>6 equally here.</p> <p>7 To receive a visual depiction means to take</p> <p>8 possession of it. This includes the knowing acceptance of</p> <p>9 a depiction previously requested. Receiving includes the</p> <p>10 downloading of a photograph or video by means of the</p> <p>11 internet.</p> <p>12 The government must prove that the defendant</p> <p>13 received the depiction knowingly. An act is done</p> <p>14 knowingly when it is done voluntarily and intentionally</p> <p>15 and not because of accident, mistake or some other</p> <p>16 innocent reason.</p> <p>17 Second element of receipt of child pornography:</p> <p>18 In or affecting interstate or foreign commerce.</p> <p>19 The second element of count five that the</p> <p>20 government must prove beyond a reasonable doubt is that</p> <p>21 the visual depiction was mailed or transported in or</p> <p>22 affecting interstate or foreign commerce or was produced</p> <p>23 using materials that had been transported in or affecting</p> <p>24 interstate or foreign commerce.</p> <p>25 The indictment alleges that the visual depiction</p>



## Jury Charge

1120

1 was actually transported in interstate or foreign  
2 commerce. I have already instructed you on what it means  
3 for a visual depiction to be actually transported in  
4 interstate or foreign commerce or produced using materials  
5 that had been transported in or affecting interstate or  
6 foreign commerce.

7 Third element of receipt of child pornography:  
8 Visual depiction of sexually explicit conduct.

9 The third element of count five that the  
10 government must prove beyond a reasonable doubt is that  
11 the production of the visual depiction involved the use of  
12 a minor engaging in sexually explicit conduct, as I have  
13 already explained that term to you, and portrays that  
14 minor engaged in that conduct.

15 I have already instructed you that the visual  
16 depiction must be a real person under the age of 18  
17 engaging in sexually explicit conduct. I reiterate that  
18 the government does not have to prove the identity of the  
19 minor or the exact age of the minor. You may consider all  
20 the evidence in determining whether the depiction  
21 portrayed an actual person under the age of 18 engaging in  
22 sexually explicit conduct.

23 Fourth element of receipt of child pornography:  
24 The defendant acted knowingly.

25 The fourth element of count five that the

## Jury Charge

1121

1 government must prove beyond a reasonable doubt is that  
2 the defendant knew both that the production of the visual  
3 depiction involved the use of a minor engaging in sexually  
4 explicit conduct, and that it portrayed a minor engaged in  
5 that conduct.

6 As I stated before, an act is done knowingly  
7 when it is done voluntarily and intentionally, and not  
8 because of accident, mistake or some other innocent  
9 reason.

10 In this case, the term knowingly refers to an  
11 awareness of the sexually explicit nature of the material  
12 and to the knowledge that the visual depiction was in fact  
13 an act -- of an actual minor engaged in that sexually  
14 explicit conduct.

15 The government must show that the defendant had  
16 knowledge of the general nature of the contents of the  
17 material. The defendant need not have specific knowledge  
18 of the identity or the actual age of the minor depicted,  
19 but the defendant must have knowledge or an awareness that  
20 the material contained a visual depiction of a minor  
21 engaging in sexually explicit conduct. Such knowledge may  
22 be shown by direct or circumstantial evidence, or both.  
23 Eyewitness testimony of the defendant's viewing of the  
24 material is not necessary to prove his or her awareness of  
25 its contents. The circumstances may warrant an inference

## Jury Charge

1122

1 that he or she was aware of the material -- what the  
2 material depicts. Furthermore, the defendant's belief as  
3 to the legality or illegality of the material is  
4 irrelevant.

5 Before you can find that the defendant acted  
6 intentionally, you must be satisfied beyond a reasonable  
7 doubt that the defendant acted deliberately and  
8 purposefully. That is, that the defendant's acts must  
9 have been the product of the defendant's conscious  
10 objective rather than the product of a mistake or  
11 accident. The intent with which an act is done is more  
12 often shown by the act itself or by a series of acts than  
13 by statements made long after its occurrence. Frequently  
14 the acts of individuals speak their intentions more  
15 clearly than do their words. The adage, actions speak  
16 louder than words, applies here. Accordingly, knowledge  
17 and intent are usually established by surrounding facts  
18 and circumstances as of the time the acts in question  
19 occurred, or the events took place, and the reasonable  
20 inferences to be drawn from them.

21 Again, the definition of intentional applies to  
22 all counts of the indictment in which it is referred to.

23 Count 15, possession of child pornography.

24 Count 15 of the indictment charges the defendant  
25 with possession of child pornography. Count 15 of the

## Jury Charge

1123

1 indictment reads as follows.

2 From the indictment now.

3 Quote, on or about January 28, 2014, within the  
4 Eastern District of New York, the defendant Joseph Valerio  
5 did knowingly and intentionally possess matter containing  
6 one or more visual depictions, to wit: images in digital  
7 files, in and affecting interstate and foreign commerce,  
8 and which visual depictions had been mailed and shipped  
9 and transported using a means and facility of interstate  
10 and foreign commerce, and which were produced using  
11 materials which had been mailed and shipped and  
12 transported, the production of such visual depictions  
13 having involved the use of one or more minors engaging in  
14 sexually explicit conduct, and such visual depictions were  
15 of such conduct. End quote.

16 Count 15.

17 Count 15 of the indictment charges the defendant  
18 with Section 2252(a)(4)(B) of Title 18 of the United  
19 States Code. That section provides, in relevant part:

20 Now quoting the statute.

21 Any person who knowingly possesses or knowingly  
22 accesses with intent to view one or more books, magazines,  
23 periodicals, films, videotapes or other matter which  
24 contain any visual depiction that has been mailed or has  
25 been shipped or transported using any means or facility of

**Jury Charge****1124**

1 interstate or foreign commerce, or in or affecting  
 2 interstate or foreign commerce, or which was produced  
 3 using materials which have been mailed or so shipped or  
 4 transported, by any means, including by computer, if, one,  
 5 the producing of such visual depiction involves the use of  
 6 a minor engaging in sexually explicit conduct; and, two,  
 7 such visual depiction is of such conduct shall be guilty  
 8 of a crime, end of quote.

9 In order to prove that the defendant possessed  
 10 child pornography, it is necessary that the evidence  
 11 establish beyond a reasonable doubt -- obviously the  
 12 government has the burden of proof beyond a reasonable  
 13 doubt as to each of these elements.

14 First, that the defendant knowingly possessed a  
 15 visual depiction, as I have already explained that term to  
 16 you.

17 Second, that the visual depiction was  
 18 transported in or affecting interstate or foreign  
 19 commerce, or the visual depiction was produced using  
 20 materials that had been transported in interstate or  
 21 foreign commerce.

22 Third, that the production of the visual  
 23 depiction involved the use of a minor engaging in sexually  
 24 explicit conduct and portrays that minor engaged in that  
 25 conduct.

**Jury Charge****1125**

1 And, fourth, that the defendant knew that the  
 2 production of the visual depiction involved the use of a  
 3 minor engaging in sexually explicit conduct and portrayed  
 4 a minor engaged in that conduct.

5 The first element that the government must prove  
 6 beyond a reasonable doubt is that the defendant knowingly  
 7 and intentionally possessed a visual depiction. I have  
 8 already defined the terms knowingly, intentionally and  
 9 visual depiction, and you should apply those definitions  
 10 and instructions here.

11 To possess something means to have it within a  
 12 person's control. This does not necessarily mean that the  
 13 person must hold it physically, that is, have actual  
 14 possession of it. As long as the visual depiction was  
 15 within the defendant's control, he possesses it. If you  
 16 find that the defendant either had actual possession of  
 17 the depiction or that he had power and intention to  
 18 exercise control over it, even though it was not in his  
 19 physical possession, you may find that the government has  
 20 proven possession.

21 The law also recognizes that possession may be  
 22 sole or joint. If one person alone possesses it, that is  
 23 sole possession. However, it is possible that more than  
 24 one person may have the power and intention to exercise  
 25 control over the visual depiction. This is called joint

**Jury Charge****1126**

1 possession.

2 If you find that the defendant has such power  
 3 and intention, then he possessed the depiction even if he  
 4 possessed it jointly with another person.

5 The second element of count 15 that the  
 6 government must prove beyond a reasonable doubt is that  
 7 the visual depiction was mailed or transported in or  
 8 affecting interstate or foreign commerce. The indictment  
 9 alleges that the particular visual depictions were  
 10 transported in or affecting interstate or foreign  
 11 commerce, or produced using materials that had been  
 12 transported in interstate or foreign commerce.

13 Transmission of photographs or video by means of  
 14 the internet constitutes transported in or affecting  
 15 interstate commerce. However, you must find beyond a  
 16 reasonable doubt that the specific depiction in question  
 17 was actually transmitted by means of the internet.

18 The third element of count 15 that the  
 19 government must prove beyond a reasonable doubt is that  
 20 the production of the visual depiction involved in the use  
 21 of an actual minor engaged in sexually explicit conduct,  
 22 as I have already explained that term to you, and portrays  
 23 that minor engaged in that conduct.

24 The visual depiction must be of a real person  
 25 under the age of 18 engaging in sexually explicit conduct,

**Jury Charge****1127**

1 the government does not have to prove the identity of the  
 2 minor or the exact age of the minor. You may consider all  
 3 the evidence, including your viewing of the depiction, in  
 4 determining whether the depiction portrayed an actual  
 5 person under the age of 18 engaging in sexually explicit  
 6 conduct. I have already defined the term sexually  
 7 explicit conduct, you should apply that definition here.

8 The fourth element of count 15 that the  
 9 government must prove beyond a reasonable doubt is that  
 10 the defendant knew both that the production of the visual  
 11 depiction involved the use of a minor engaging in sexually  
 12 explicit conduct and that it portrayed a minor engaged in  
 13 that conduct.

14 As I stated before, an act is done knowingly  
 15 when it is done voluntarily and intentionally and not  
 16 because of accident, mistake or some other innocent  
 17 reason. In this case, the term knowingly refers to an  
 18 awareness of the sexually explicit nature of the material,  
 19 and to the knowledge that the visual depictions were in  
 20 fact of actual minors engaged in that sexually explicit  
 21 conduct.

22 The government must show that the defendant had  
 23 knowledge of the general nature of the contents of the  
 24 material. The defendant need not have specific knowledge  
 25 as to the identity or actual age of the underage

**Jury Charge****1128**

1 performer, but the defendant must have knowledge or an  
 2 awareness that the material contained a visual depiction  
 3 of a minor engaging in sexually explicit conduct.  
 4 Such knowledge may be shown by direct or  
 5 circumstantial evidence or both. Eyewitness testimony of  
 6 the defendant's viewing of the material is not necessary  
 7 to prove his awareness of its contents; but the  
 8 circumstances may warrant an inference that he was aware  
 9 of the -- what the material depicts, furthermore, the  
 10 defendant's belief as to the legality or illegality of the  
 11 material is irrelevant.  
 12 That ends part two. You will be happy to note  
 13 part three is shorter. There is about ten minutes to go.  
 14 Everyone okay?  
 15 Part three are my rules regarding deliberations.  
 16 Finally, a few closing remarks.  
 17 Keep in mind that nothing I have said in these  
 18 instructions is intended to suggest to you in any way what  
 19 I think your verdict should be. That is entirely for you  
 20 to decide.  
 21 By way of reminder, I charge you once again that  
 22 it is your responsibility to judge the facts in this case  
 23 only from the evidence presented during the trial and to  
 24 apply the law as I have given it to you to the facts as  
 25 you find them from the evidence.

**Jury Charge****1129**

1 I instruct you that the decision you reach as to  
 2 each element for each charge in the indictment must be  
 3 unanimous; that is, all 12 of you must agree on every  
 4 element in every count. I also instruct you to consider  
 5 each count of the indictment separately. Again, the  
 6 verdict on each element and each count must be unanimous.  
 7 When you retire, it is your duty to discuss the  
 8 case for the purpose of reaching a verdict. Each of you  
 9 must decide the case for yourself. But you should only do  
 10 so after considering all the evidence, listening to the  
 11 views of your fellow jurors and discussing it fully.  
 12 It is important that you reach a verdict, if you  
 13 can do so conscientiously. You should not hesitate to  
 14 reconsider your opinions from time to time and to change  
 15 them if you are convinced that they are wrong.  
 16 However, do not surrender an honest conviction  
 17 as to weight and effect of the evidence simply to arrive  
 18 at a verdict.  
 19 Remember also that your verdict must be based  
 20 solely on the evidence in the case and the law as the  
 21 Court has given it to you, not on anything else. Opening  
 22 statements, closing arguments, or other statements or  
 23 arguments of counsel are not evidence. If your  
 24 recollection of the facts differs from the way counsel has  
 25 stated the facts to be, then your recollection controls.

**Jury Charge****1130**

1 And, finally, bear in mind that the government  
 2 has the burden of proof and that you must be convinced of  
 3 the defendant's guilt beyond a reasonable doubt to return  
 4 a guilty verdict. If you find that this burden has not  
 5 been met, you must return a verdict of not guilty  
 6 The question of possible punishment of the  
 7 defendant is of no concern to the jury and should not, in  
 8 any sense, enter into or influence your deliberations.  
 9 The duty of imposing sentence rests exclusively upon the  
 10 Court. Your function is to weigh the evidence in the case  
 11 and to determine whether or not the defendant is guilty  
 12 beyond a reasonable doubt, solely upon the basis of such  
 13 evidence. Under your oath as jurors, you cannot allow a  
 14 consideration of the punishment which may be imposed upon  
 15 the defendant if he is convicted to influence your verdict  
 16 in any way or in any sense enter into your deliberations.  
 17 Under your oath as jurors, you are not to be  
 18 swayed by sympathy for one side or the other. You are to  
 19 be guided solely by the evidence in this case, and the  
 20 crucial question that you must ask yourselves as you sift  
 21 through the evidence is: Has the government proven the  
 22 guilt of the defendant beyond a reasonable doubt?  
 23 It is for you alone to decide whether the  
 24 government has proven that the defendant is guilty of the  
 25 crimes charged solely on the basis of the evidence and

**Jury Charge****1131**

1 subject to the law as I charge you. It must be clear to  
 2 you that once you let fear, prejudice, bias or sympathy  
 3 interfere with your thinking, there is a risk you will not  
 4 arrive at a true and just verdict.  
 5 If you have a reasonable doubt as to the  
 6 defendant's guilt, you must find a verdict of acquittal.  
 7 But, on the other hand, if you should find that the  
 8 government has met its burden of proving the defendant's  
 9 guilt beyond a reasonable doubt, you should not hesitate  
 10 because of sympathy or any other reason to render a  
 11 verdict of guilty.  
 12 When you get into the jury room before you begin  
 13 your deliberations, your first act will be to select one  
 14 of you to be a foreperson. The foreperson will be  
 15 responsible for signing all communications to the Court  
 16 and for handing it to the court security officer during  
 17 your deliberations. But, of course, his or her vote is  
 18 entitled to no greater weight than any other juror.  
 19 During the trial I permitted the taking of notes  
 20 by those of you who wished to do so. At that time I  
 21 pointed out that while you could take notes, there is no  
 22 need for you doing so because the court reporter takes  
 23 down everything said in the courtroom. And during  
 24 deliberations the court reporter will read back to you any  
 25 portion of the transcript you may ask for.

**Jury Charge****1132**

1 For those of you who did take notes during the  
 2 trial, I point out to you and your fellow jurors that your  
 3 notes are simply an aid to memory for the particular juror  
 4 who takes the notes. You are instructed that your notes  
 5 are only a tool to aid your own individual memory and you  
 6 should not compare your notes with other jurors in your  
 7 deliberations. Jurors who did not take notes should not  
 8 be influenced by the fact that other jurors have taken  
 9 notes. Your notes are not evidence. They may be  
 10 inaccurate and are by no means a complete recording of the  
 11 trial testimony. Any difference between a juror's  
 12 recollection and the other juror's notes should be settled  
 13 by asking to have the court reporter read back the  
 14 transcript, for it is the court record rather than any  
 15 juror's notes upon which the jury must base its  
 16 determination of the facts and its verdict.

17 It is very important that you are not to  
 18 communicate with anyone outside the jury room about your  
 19 deliberations or about anything touching this case. There  
 20 is only one exception to this rule.

21 If it becomes necessary during the deliberations  
 22 to communicate with me, you may send a note, through the  
 23 court security officer, signed by your foreperson or by  
 24 one or more members of the jury. No member of the jury  
 25 should ever attempt to communicate with me except by a

**Jury Charge****1133**

1 signed writing, and I will never communicate with any  
 2 member of the jury on any subject touching the merits of  
 3 the case other than in writing or orally here in open  
 4 court. If you send any notes to the Court, do not  
 5 disclose anything about your deliberations. Specifically,  
 6 do not disclose to anyone, not even to me, how the jury  
 7 stands numerically or otherwise on the question of the  
 8 guilt or innocence of the defendant until after you have  
 9 reached a unanimous verdict or have been discharged.

10 If during your deliberations you want to see any  
 11 of the exhibits, they will be sent to you in the jury room  
 12 upon written request. If you want any of the testimony  
 13 read back, that can also be done. But please remember  
 14 that it is not always easy to locate what you might want,  
 15 so be as specific as you possibly can in requesting  
 16 exhibits or portions of testimony which you may want. If  
 17 you request a readback of testimony, please be patient, as  
 18 it may take some time to locate and agree upon the  
 19 specific testimony required.

20 I want to emphasize that point. If you send a  
 21 note requesting readback of testimony and I don't bring  
 22 you out immediately, it doesn't mean I didn't get the  
 23 note. I have to consult with the lawyers and the court  
 24 reporters as to what it is you are requesting. As soon as  
 25 the portion is isolated, we will bring you back for the

**Jury Charge****1134**

1 readback.

2 I have prepared a verdict sheet which will be  
 3 given to you in a moment. The verdict sheet is given to  
 4 you to record your verdict after you have reached a  
 5 verdict as to all counts in the indictment.

6 When you have reached a decision, have the  
 7 foreperson sign the verdict form and put the date on, and  
 8 notify the marshal by note that you have reached a  
 9 verdict.

10 I reiterate that any verdict you reach must be  
 11 unanimous.

12 Your oath sums up your duty, and that is without  
 13 fear or favor to any person, you will well and truly try  
 14 the issues in this case according to the evidence given to  
 15 you in court and the laws of the United States.

16 This concludes my instructions. I want to thank  
 17 you for your close and careful attention.

18 In a moment, members of the jury, you will  
 19 retire to deliberate after I swear in the marshal. I do  
 20 ask as your first order of business you elect a foreperson  
 21 and send me a note dated and timed, identifying that  
 22 foreperson.

23 So you are going to go back into the jury room  
 24 with two documents.

25 The first document we will mark Court Exhibit E,

**Jury Charge****1135**

1 as in Edward, is a copy of the superseding indictment.

2 Again, this is only given to you so you will  
 3 have a reference when you are going through each count on  
 4 the verdict sheet. That is the only purpose of this. It  
 5 is merely an accusation and nothing more.

6 And I will give you a copy of the verdict form  
 7 to record your verdict on, which we will mark as Court  
 8 Exhibit F.

9 The verdict form is self-explanatory. Again,  
 10 your verdict on each count must be unanimous and you must  
 11 consider each count separately.

12 I will just have my law clerk give those two  
 13 documents to juror number one.

14 I will now give the oath to the court security  
 15 officer.

16 Please raise your right hand.

17 (Court security officer is sworn to attend to  
 18 the jury.)

19 THE COURT: A couple of other things.

20 First, when you are in the jury room, you can  
 21 only deliberate when all 12 of you are present.

22 If someone uses the restroom, and sometimes  
 23 there are jurors who are smokers and you need to have a  
 24 smoke break, the court security officer will take those  
 25 jurors outside and you have to stop until all 12 of you

**Jury Charge****1136**

1 are again present. That is very important.  
 2 Next I need to discharge the alternate jurors in  
 3 this case, and I will give you some instructions with  
 4 respect to that.  
 5 I will ask you not to discuss the case with  
 6 anyone, and you are not to read or listen to anything with  
 7 regard to the case until you get a call from Michelle or  
 8 the jury department that the case is over.  
 9 The reason for that is if for some reason one of  
 10 the 12 jurors could not continue the deliberations, and as  
 11 long as you continue to follow my instructions, we can  
 12 call you up and ask you to come back to continue in the  
 13 deliberations.  
 14 Please follow that instruction until the case is  
 15 over. Obviously you don't have to sit by the telephone.  
 16 You can go about your normal lives.  
 17 I just want to thank the alternates for their  
 18 service as jurors in this case. And I will ask the court  
 19 security officer to escort both of you back to the jury  
 20 room to get your stuff. And the 12 should remain here and  
 21 the two alternates may do that now, and the 12 will  
 22 proceed to the jury room after the two alternates have  
 23 left.  
 24 Thank you.  
 25 (The alternate jurors are excused.)

**Jury Charge****1137**

1 THE COURT: Let me speak to the lawyers at the  
 2 sidebar for a moment.  
 3  
 4 (Whereupon, at this time the following took  
 5 place at the sidebar.)  
 6 THE COURT: Any issues with the charge?  
 7 MR. LATO: No, your Honor.  
 8 MR. LaPINTA: No.  
 9 MR. BODE: No.  
 10 MR. LaPINTA: No.  
 11 THE COURT: Thank you.  
 12  
 13 (Whereupon, at this time the following takes  
 14 place in open court.)  
 15 THE COURT: The lunches should be arriving  
 16 sometime around 12:15.  
 17 Obviously you can continue to deliberate as you  
 18 eat your lunch, or if you wish to take a break as you eat  
 19 the lunch, it is up to you to decide.  
 20 We will just wait until we hear that the  
 21 alternates are out.  
 22 (Whereupon, at this time there was a pause in  
 23 the proceedings.)  
 24 THE COURT: All right, members of the jury,  
 25 please retire to the jury room to begin your

**1138**

1 deliberations.  
 2 Thank you.  
 3 (The jury exits the courtroom at 11:23 a.m.)  
 4 THE COURT: Everyone can be seated.  
 5 If you can just hang around for a few minutes,  
 6 because a lot of times notes come around in the beginning.  
 7 You don't have to stay by the courtroom, as long as  
 8 Michelle has your cell phone number, you can go down to  
 9 the cafeteria or wherever you want to go.  
 10 I assume all the exhibits are ready to go.  
 11 MR. KABRAWALA: We will go through that right  
 12 now and have counsel agree that they are the right ones.  
 13 THE COURT: All right.  
 14 Why don't you do that now. Thank you.  
 15  
 16 (Whereupon, a recess was taken.  
 17  
 18 (The following takes place at 12:08 p.m.)  
 19 THE COURT: We did receive two notes. The first  
 20 one is just identifying the foreperson as Mr. Raymond.  
 21 And that has been given to both sides.  
 22 The second note, Court Exhibit 2, requests in  
 23 writing the Judge's instructions, and from the prosecution  
 24 the binder containing the evidence in email form.  
 25 Obviously I have the instructions here, which

**1139**

1 has been marked as Court Exhibit D.  
 2 Any objection to that going back?  
 3 MR. BODE: No, your Honor.  
 4 MR. LATO: No, your Honor.  
 5 THE COURT: And then with respect to the emails,  
 6 is there agreement as to what those exhibits are?  
 7 MR. LATO: Yes, your Honor.  
 8 I think but for the parenthetical at the end of  
 9 the note would be clear. But when they put the  
 10 parenthetical, in email form, does it become -- it becomes  
 11 unclear. Do they want just the emails? That is the  
 12 problem.  
 13 THE COURT: I assume when they say the binder  
 14 containing the evidence in email form, he held up that  
 15 binder in summation and I assume that that is what they  
 16 are referring to.  
 17 MR. LATO: I do as well, your Honor, feel that.  
 18 But I would ask that you make inquiry as to what they  
 19 want. Do they want the entire binder? We have obviously  
 20 taken out the CD, your Honor.  
 21 THE COURT: There are other things in the  
 22 binder?  
 23 MR. BODE: There are photos in evidence, and  
 24 like the DHL receipts and other evidentiary items.  
 25 THE COURT: I will bring them out and let them



1140

1 know how I'm interpreting the note. If that is okay?

2 MR. LATO: Yes, your Honor.

3 THE COURT: Why not have a record of what  
4 exhibit numbers are going back. What exhibit numbers are  
5 they?

6 MR. BODE: We will pull out all the pictures and  
7 only include the emails, and I will put it on the record.

8 THE COURT: Okay.

9 MR. BODE: If we could, Mr. Lato is going to ask  
10 something before I keep pulling things out.

11 MR. LATO: May we have a moment to confer with  
12 Mr. Valerio? He has some comment, and before I speak  
13 again let me get his position.

14 THE COURT: Sure.

15 (Defense counsel confer with the defendant.)

16 MR. LATO: Your Honor, because in my estimation  
17 there are at least some reason to question as to whether  
18 the jury wants only the emails, as opposed to the emails  
19 and the other things, and because it is Mr. Valerio's  
20 position that the jury should see everything, I'm asking  
21 your Honor out of an abundance of caution just to ask the  
22 jury whether they want only the emails or the other items  
23 as well.

24 THE COURT: What is the government's position on  
25 that?

1141

1 MR. BODE: I think the note is clear, Judge.

2 But I don't have any objection to asking them.

3 THE COURT: Okay.

4 What I will say to them is that the binder  
5 contains other exhibits aside from the emails. And I want  
6 them to send me another note indicating as to whether they  
7 want all the exhibits in the binder or just the email  
8 exhibits.

9 MR. LATO: Yes, your Honor. Minus the CDs.  
10 That they cannot have. They can, of course, listen to it  
11 in the courtroom.

12 THE COURT: As I understand it, other than the  
13 CDs, is the binder then every document in the case?

14 MR. BODE: Every documentary exhibit, yes, your  
15 Honor. And it includes the PowerPoint with the child  
16 pornography images, and obviously not the CDs. Also the  
17 redacted images as well. All the photographs from the  
18 search scene, your Honor.

19 MR. LATO: Yes, your Honor.

20 THE COURT: At least confirm with Mr. Valerio --  
21 or I will confirm with him.

22 Mr. Valerio, I want to make sure that your  
23 lawyers are following your request.

24 The government has a binder of all the  
25 documentary evidence that they have submitted into

1142

1 evidence in the case, which includes emails and all the  
2 documents they have submitted.

3 You want me to ask the jury whether they want  
4 the binder of all the documentary evidence or just the  
5 emails. Do you want me to clarify that? Is that what you  
6 want?

7 Or I can bring them out and say I'm interpreting  
8 your note to only requesting the emails. If you want all  
9 the documents, then you can let me know.

10 MR. LATO: Your Honor, after further  
11 consultation while I was addressing the Court, Mr. LaPinta  
12 was speaking to Mr. Valerio, it is now his request, and  
13 ours as well, that your Honor just give them the emails.

14 THE COURT: Is that correct, Mr. Valerio?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: You don't want me to bring them out?  
17 Just send the emails back?

18 MR. LATO: Yes, your Honor. And if that is not  
19 sufficient, I assume we will get another note from them.

20 THE COURT: I was willing to do that if it was  
21 the defense's request so there is no issue. But I think  
22 the note is clear, the binder containing the evidence in  
23 email form. That is all they want. So I believe this is  
24 the appropriate response.

25 MR. BODE: In terms of our interpretation,

1143

1 Judge, we are interpreting emails as including their  
2 attachments as well, if there is an attachment to the  
3 email, but obviously not the child pornography.

4 THE COURT: Yes. It goes to the attachments  
5 other than the child pornography.

6 MR. BODE: Yes.

7 Like, there is an email with Mr. Valerio's  
8 picture attached to it, and that is obviously part of the  
9 email.

10 THE COURT: Yes.

11 Do you agree that it should include attachments?

12 MR. LATO: Yes, your Honor.

13 THE COURT: All right.

14 MR. BODE: and headers for emails. I assume  
15 that that is part of an email?

16 THE COURT: Yes.

17 (Whereupon, at this time there was a pause in  
18 the proceedings.)

19 MR. BODE: We are handing up and we agree  
20 this -- these are the correct exhibits, and we can read  
21 into the record the exhibit numbers, and this can go to  
22 the jury.

23 THE COURT: Agreed?

24 MR. LaPINTA: Yes.

25 MR. BODE: 2, 2-B, 2-D, 2-E, 5 --

1144

1 THE COURT: Why don't you read them right out of  
2 the book, and that would be better.

3 MR. BODE: Yes.

4 MR. LaPINTA: 2, 2-B, 2-D, 2-D, 5, 5-A, 203,  
5 205, 205-A, 206, 208, 209, 210, 211, 211-A, 212, 213, 214,  
6 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225,  
7 226, 227, 228, 229, 229-A, 230, 231, 235, 238, 238-A, 243,  
8 244, 245, 245-A, 245-B, 246, 247, 303, 303-A, 501-D, as in  
9 dog, 502-A, 503-G, 504-E, 551, 552, 552-A, 553, 554,  
10 554-A, 554-B, 554-C, 556, 557, 558, 559, 559-A, 560, 561,  
11 562, 564, 567, 567-A, 568.

12 That's it.

13 THE COURT: All right.

14 So the record should reflect that Mr. LaPinta  
15 read the exhibits that are in the binder going back to the  
16 jury, along with my instructions, which is Court  
17 Exhibit D, as in David.

18 MR. LaPINTA: Thank you.

19 THE COURT: You can all take a lunch break if  
20 you wish to go now.

21 MR. LATO: Before your Honor leaves the bench, I  
22 was conferring with Mr. Valerio while everyone was  
23 reciting the exhibit numbers, and I would like to confer  
24 with Mr. LaPinta so we don't have to come back.

25 THE COURT: Something to do with these exhibits?

1145

1 MR. LATO: Correct.

2 (Defense counsel confer.)

3 MR. LATO: Your Honor, it is Mr. Valerio's  
4 position, as distinct from the opinion of Mr. LaPinta and  
5 myself, that the jury should also get the text messages.

6 Mr. LaPinta and I have explained to Mr. Valerio  
7 that the email doesn't ask for text messages.

8 THE COURT: You said the email. You mean the  
9 note.

10 MR. LATO: Yes, the note, your Honor, does not  
11 refer to text messages.

12 In addition, Mr. LaPinta and I are in agreement  
13 that the text messages have devastating evidence against  
14 Mr. Valerio. And unless the jury specifically requests  
15 that in a note, it is our position that that note should  
16 not be shown -- I'm sorry, it is our position that the  
17 text messages should not be given without a specific  
18 request.

19 THE COURT: I agree.

20 I want the record to be perfectly clear at this  
21 point that the note refers to the following: The  
22 binder -- from the prosecution the binder containing the  
23 evidence, paren, in email form.

24 This is one of the situations where not only is  
25 the note clear, but they want the evidence in email form,

1146

1 which is a very distinct category of evidence.

2 But it is consistent with what happened during  
3 the summation. Mr. Kabrawala during the summations made  
4 reference to all the emails, and had a PowerPoint and  
5 invited them by showing them a binder and saying the  
6 emails are all in here if you wish to review them.

7 That is why I was confused when the parties  
8 suggested a binder containing all the evidence in the  
9 case, because I didn't understand the binder to have all  
10 the evidence -- evidence in the case when Mr. Kabrawala  
11 was holding it. They referred to only emails and that is  
12 what they ask for.

13 Text messages are different from email messages.  
14 And I don't think a response as to that, independent as to  
15 whether it is devastating to Mr. Valerio, the note is not  
16 requesting that. And I will not send back the text  
17 messages because it is not responsive to the note. And  
18 obviously if they start paging through the emails and see  
19 that there are no text messages, they are certainly more  
20 than capable to write me another note saying they also  
21 wanted a text message or messages.

22 If memory serves me correctly, they are all  
23 contained in one document, the text messages?

24 MR. BODE: Two documents, there are two  
25 different types of texts. And they are in two documents.

1147

1 THE COURT: Yes.

2 It is not responsive to the note to send text  
3 messages, especially in response to the government's  
4 summation.

5 All right.

6 Let's take a lunch break.

7 (A luncheon recess is taken at 12:27 p.m.)

**Jury Charge****1148**

1 In order to prove the defendant guilty of  
2 receiving child pornography, the government must prove  
3 each of the following four elements beyond a reasonable  
4 doubt:

5 First, that the defendant received a visual  
6 depiction, which term I have already defined for you and  
7 applies equally here.

8 Second, that the visual depiction was  
9 transported in or affecting interstate or foreign  
10 commerce.

11 Third, that the production of the visual  
12 depiction involved the use of a minor engaging in sexually  
13 explicit conduct, and portrayed that minor engaged in that  
14 conduct.

15 Fourth, that the defendant knew that the  
16 production of the visual depiction involved the use of a  
17 minor engaged in sexually explicit conduct, and portrayed  
18 a minor engaged in that conduct.

19 I remind you that the government can meet its  
20 burden of proof of count five by proving that the  
21 defendant did the acts charged himself, or by proving that  
22 he aided and abetted another person to receive child  
23 pornography.

24 The first element of receipt of child  
25 pornography, receiving.

**Jury Charge****1149**

1 The first element of count five that the  
2 government must prove beyond a reasonable doubt that the  
3 defendant knowingly received a visual depiction.

4 You have already been instructed on the meaning  
5 of the term visual depiction, and that instruction applies  
6 equally here.

7 To receive a visual depiction means to take  
8 possession of it. This includes the knowing acceptance of  
9 a depiction previously requested. Receiving includes the  
10 downloading of a photograph or video by means of the  
11 internet.

12 The government must prove that the defendant  
13 received the depiction knowingly. An act is done  
14 knowingly when it is done voluntarily and intentionally  
15 and not because of accident, mistake or some other  
16 innocent reason.

17 Second element of receipt of child pornography:  
18 In or affecting interstate or foreign commerce.

19 The second element of count five that the  
20 government must prove beyond a reasonable doubt is that  
21 the visual depiction was mailed or transported in or  
22 affecting interstate or foreign commerce or was produced  
23 using materials that had been transported in or affecting  
24 interstate or foreign commerce.

25 The indictment alleges that the visual depiction

**Jury Charge****1150**

1 was actually transported in interstate or foreign  
2 commerce. I have already instructed you on what it means  
3 for a visual depiction to be actually transported in  
4 interstate or foreign commerce or produced using materials  
5 that had been transported in or affecting interstate or  
6 foreign commerce.

7 Third element of receipt of child pornography:  
8 Visual depiction of sexually explicit conduct.

9 The third element of count five that the  
10 government must prove beyond a reasonable doubt is that  
11 the production of the visual depiction involved the use of  
12 a minor engaging in sexually explicit conduct, as I have  
13 already explained that term to you, and portrays that  
14 minor engaged in that conduct.

15 I have already instructed you that the visual  
16 depiction must be a real person under the age of 18  
17 engaging in sexually explicit conduct. I reiterate that  
18 the government does not have to prove the identity of the  
19 minor or the exact age of the minor. You may consider all  
20 the evidence in determining whether the depiction  
21 portrayed an actual person under the age of 18 engaging in  
22 sexually explicit conduct.

23 Fourth element of receipt of child pornography:  
24 The defendant acted knowingly.

25 The fourth element of count five that the

**Jury Charge****1151**

1 government must prove beyond a reasonable doubt is that  
2 the defendant knew both that the production of the visual  
3 depiction involved the use of a minor engaging in sexually  
4 explicit conduct, and that it portrayed a minor engaged in  
5 that conduct.

6 As I stated before, an act is done knowingly  
7 when it is done voluntarily and intentionally, and not  
8 because of accident, mistake or some other innocent  
9 reason.

10 In this case, the term knowingly refers to an  
11 awareness of the sexually explicit nature of the material  
12 and to the knowledge that the visual depiction was in fact  
13 an act -- of an actual minor engaged in that sexually  
14 explicit conduct.

15 The government must show that the defendant had  
16 knowledge of the general nature of the contents of the  
17 material. The defendant need not have specific knowledge  
18 of the identity or the actual age of the minor depicted,  
19 but the defendant must have knowledge or an awareness that  
20 the material contained a visual depiction of a minor  
21 engaging in sexually explicit conduct. Such knowledge may  
22 be shown by direct or circumstantial evidence, or both.  
23 Eyewitness testimony of the defendant's viewing of the  
24 material is not necessary to prove his or her awareness of  
25 its contents. The circumstances may warrant an inference



**Jury Charge****1152**

1 that he or she was aware of the material -- what the  
 2 material depicts. Furthermore, the defendant's belief as  
 3 to the legality or illegality of the material is  
 4 irrelevant.

5 Before you can find that the defendant acted  
 6 intentionally, you must be satisfied beyond a reasonable  
 7 doubt that the defendant acted deliberately and  
 8 purposefully. That is, that the defendant's acts must  
 9 have been the product of the defendant's conscious  
 10 objective rather than the product of a mistake or  
 11 accident. The intent with which an act is done is more  
 12 often shown by the act itself or by a series of acts than  
 13 by statements made long after its occurrence. Frequently  
 14 the acts of individuals speak their intentions more  
 15 clearly than do their words. The adage, actions speak  
 16 louder than words, applies here. Accordingly, knowledge  
 17 and intent are usually established by surrounding facts  
 18 and circumstances as of the time the acts in question  
 19 occurred, or the events took place, and the reasonable  
 20 inferences to be drawn from them.

21 Again, the definition of intentional applies to  
 22 all counts of the indictment in which it is referred to.

23 Count 15, possession of child pornography.

24 Count 15 of the indictment charges the defendant  
 25 with possession of child pornography. Count 15 of the

**Jury Charge****1154**

1 interstate or foreign commerce, or in or affecting  
 2 interstate or foreign commerce, or which was produced  
 3 using materials which have been mailed or so shipped or  
 4 transported, by any means, including by computer, if, one,  
 5 the producing of such visual depiction involves the use of  
 6 a minor engaging in sexually explicit conduct; and, two,  
 7 such visual depiction is of such conduct shall be guilty  
 8 of a crime, end of quote.

9 In order to prove that the defendant possessed  
 10 child pornography, it is necessary that the evidence  
 11 establish beyond a reasonable doubt -- obviously the  
 12 government has the burden of proof beyond a reasonable  
 13 doubt as to each of these elements.

14 First, that the defendant knowingly possessed a  
 15 visual depiction, as I have already explained that term to  
 16 you.

17 Second, that the visual depiction was  
 18 transported in or affecting interstate or foreign  
 19 commerce, or the visual depiction was produced using  
 20 materials that had been transported in interstate or  
 21 foreign commerce.

22 Third, that the production of the visual  
 23 depiction involved the use of a minor engaging in sexually  
 24 explicit conduct and portrays that minor engaged in that  
 25 conduct.

**Jury Charge****1153**

1 indictment reads as follows.

2 From the indictment now.

3 Quote, on or about January 28, 2014, within the  
 4 Eastern District of New York, the defendant Joseph Valerio  
 5 did knowingly and intentionally possess matter containing  
 6 one or more visual depictions, to wit: images in digital  
 7 files, in and affecting interstate and foreign commerce,  
 8 and which visual depictions had been mailed and shipped  
 9 and transported using a means and facility of interstate  
 10 and foreign commerce, and which were produced using  
 11 materials which had been mailed and shipped and  
 12 transported, the production of such visual depictions  
 13 having involved the use of one or more minors engaging in  
 14 sexually explicit conduct, and such visual depictions were  
 15 of such conduct. End quote.

16 Count 15.

17 Count 15 of the indictment charges the defendant  
 18 with Section 2252(a)(4)(B) of Title 18 of the United  
 19 States Code. That section provides, in relevant part:

20 Now quoting the statute.

21 Any person who knowingly possesses or knowingly  
 22 accesses with intent to view one or more books, magazines,  
 23 periodicals, films, videotapes or other matter which  
 24 contain any visual depiction that has been mailed or has  
 25 been shipped or transported using any means or facility of

**Jury Charge****1155**

1 And, fourth, that the defendant knew that the  
 2 production of the visual depiction involved the use of a  
 3 minor engaging in sexually explicit conduct and portrayed  
 4 a minor engaged in that conduct.

5 The first element that the government must prove  
 6 beyond a reasonable doubt is that the defendant knowingly  
 7 and intentionally possessed a visual depiction. I have  
 8 already defined the terms knowingly, intentionally and  
 9 visual depiction, and you should apply those definitions  
 10 and instructions here.

11 To possess something means to have it within a  
 12 person's control. This does not necessarily mean that the  
 13 person must hold it physically, that is, have actual  
 14 possession of it. As long as the visual depiction was  
 15 within the defendant's control, he possesses it. If you  
 16 find that the defendant either had actual possession of  
 17 the depiction or that he had power and intention to  
 18 exercise control over it, even though it was not in his  
 19 physical possession, you may find that the government has  
 20 proven possession.

21 The law also recognizes that possession may be  
 22 sole or joint. If one person alone possesses it, that is  
 23 sole possession. However, it is possible that more than  
 24 one person may have the power and intention to exercise  
 25 control over the visual depiction. This is called joint

**Jury Charge****1156**

1 possession.

2 If you find that the defendant has such power  
3 and intention, then he possessed the depiction even if he  
4 possessed it jointly with another person.

5 The second element of count 15 that the  
6 government must prove beyond a reasonable doubt is that  
7 the visual depiction was mailed or transported in or  
8 affecting interstate or foreign commerce. The indictment  
9 alleges that the particular visual depictions were  
10 transported in or affecting interstate or foreign  
11 commerce, or produced using materials that had been  
12 transported in interstate or foreign commerce.

13 Transmission of photographs or video by means of  
14 the internet constitutes transported in or affecting  
15 interstate commerce. However, you must find beyond a  
16 reasonable doubt that the specific depiction in question  
17 was actually transmitted by means of the internet.

18 The third element of count 15 that the  
19 government must prove beyond a reasonable doubt is that  
20 the production of the visual depiction involved in the use  
21 of an actual minor engaged in sexually explicit conduct,  
22 as I have already explained that term to you, and portrays  
23 that minor engaged in that conduct.

24 The visual depiction must be of a real person  
25 under the age of 18 engaging in sexually explicit conduct,

**Jury Charge****1158**

1 performer, but the defendant must have knowledge or an  
2 awareness that the material contained a visual depiction  
3 of a minor engaging in sexually explicit conduct.

4 Such knowledge may be shown by direct or  
5 circumstantial evidence or both. Eyewitness testimony of  
6 the defendant's viewing of the material is not necessary  
7 to prove his awareness of its contents; but the  
8 circumstances may warrant an inference that he was aware  
9 of the -- what the material depicts, furthermore, the  
10 defendant's belief as to the legality or illegality of the  
11 material is irrelevant.

12 That ends part two. You will be happy to note  
13 part three is shorter. There is about ten minutes to go.  
14 Everyone okay?

15 Part three are my rules regarding deliberations.  
16 Finally, a few closing remarks.

17 Keep in mind that nothing I have said in these  
18 instructions is intended to suggest to you in any way what  
19 I think your verdict should be. That is entirely for you  
20 to decide.

21 By way of reminder, I charge you once again that  
22 it is your responsibility to judge the facts in this case  
23 only from the evidence presented during the trial and to  
24 apply the law as I have given it to you to the facts as  
25 you find them from the evidence.

**Jury Charge****1157**

1 the government does not have to prove the identity of the  
2 minor or the exact age of the minor. You may consider all  
3 the evidence, including your viewing of the depiction, in  
4 determining whether the depiction portrayed an actual  
5 person under the age of 18 engaging in sexually explicit  
6 conduct. I have already defined the term sexually  
7 explicit conduct, you should apply that definition here.

8 The fourth element of count 15 that the  
9 government must prove beyond a reasonable doubt is that  
10 the defendant knew both that the production of the visual  
11 depiction involved the use of a minor engaging in sexually  
12 explicit conduct and that it portrayed a minor engaged in  
13 that conduct.

14 As I stated before, an act is done knowingly  
15 when it is done voluntarily and intentionally and not  
16 because of accident, mistake or some other innocent  
17 reason. In this case, the term knowingly refers to an  
18 awareness of the sexually explicit nature of the material,  
19 and to the knowledge that the visual depictions were in  
20 fact of actual minors engaged in that sexually explicit  
21 conduct.

22 The government must show that the defendant had  
23 knowledge of the general nature of the contents of the  
24 material. The defendant need not have specific knowledge  
25 as to the identity or actual age of the underage

**Jury Charge****1159**

1 I instruct you that the decision you reach as to  
2 each element for each charge in the indictment must be  
3 unanimous; that is, all 12 of you must agree on every  
4 element in every count. I also instruct you to consider  
5 each count of the indictment separately. Again, the  
6 verdict on each element and each count must be unanimous.

7 When you retire, it is your duty to discuss the  
8 case for the purpose of reaching a verdict. Each of you  
9 must decide the case for yourself. But you should only do  
10 so after considering all the evidence, listening to the  
11 views of your fellow jurors and discussing it fully.

12 It is important that you reach a verdict, if you  
13 can do so conscientiously. You should not hesitate to  
14 reconsider your opinions from time to time and to change  
15 them if you are convinced that they are wrong.

16 However, do not surrender an honest conviction  
17 as to weight and effect of the evidence simply to arrive  
18 at a verdict.

19 Remember also that your verdict must be based  
20 solely on the evidence in the case and the law as the  
21 Court has given it to you, not on anything else. Opening  
22 statements, closing arguments, or other statements or  
23 arguments of counsel are not evidence. If your  
24 recollection of the facts differs from the way counsel has  
25 stated the facts to be, then your recollection controls.

**Jury Charge****1160**

1 And, finally, bear in mind that the government  
 2 has the burden of proof and that you must be convinced of  
 3 the defendant's guilt beyond a reasonable doubt to return  
 4 a guilty verdict. If you find that this burden has not  
 5 been met, you must return a verdict of not guilty  
 6 The question of possible punishment of the  
 7 defendant is of no concern to the jury and should not, in  
 8 any sense, enter into or influence your deliberations.  
 9 The duty of imposing sentence rests exclusively upon the  
 10 Court. Your function is to weigh the evidence in the case  
 11 and to determine whether or not the defendant is guilty  
 12 beyond a reasonable doubt, solely upon the basis of such  
 13 evidence. Under your oath as jurors, you cannot allow a  
 14 consideration of the punishment which may be imposed upon  
 15 the defendant if he is convicted to influence your verdict  
 16 in any way or in any sense enter into your deliberations.  
 17 Under your oath as jurors, you are not to be  
 18 swayed by sympathy for one side or the other. You are to  
 19 be guided solely by the evidence in this case, and the  
 20 crucial question that you must ask yourselves as you sift  
 21 through the evidence is: Has the government proven the  
 22 guilt of the defendant beyond a reasonable doubt?  
 23 It is for you alone to decide whether the  
 24 government has proven that the defendant is guilty of the  
 25 crimes charged solely on the basis of the evidence and

**Jury Charge****1161**

1 subject to the law as I charge you. It must be clear to  
 2 you that once you let fear, prejudice, bias or sympathy  
 3 interfere with your thinking, there is a risk you will not  
 4 arrive at a true and just verdict.  
 5 If you have a reasonable doubt as to the  
 6 defendant's guilt, you must find a verdict of acquittal.  
 7 But, on the other hand, if you should find that the  
 8 government has met its burden of proving the defendant's  
 9 guilt beyond a reasonable doubt, you should not hesitate  
 10 because of sympathy or any other reason to render a  
 11 verdict of guilty.  
 12 When you get into the jury room before you begin  
 13 your deliberations, your first act will be to select one  
 14 of you to be a foreperson. The foreperson will be  
 15 responsible for signing all communications to the Court  
 16 and for handing it to the court security officer during  
 17 your deliberations. But, of course, his or her vote is  
 18 entitled to no greater weight than any other juror.  
 19 During the trial I permitted the taking of notes  
 20 by those of you who wished to do so. At that time I  
 21 pointed out that while you could take notes, there is no  
 22 need for you doing so because the court reporter takes  
 23 down everything said in the courtroom. And during  
 24 deliberations the court reporter will read back to you any  
 25 portion of the transcript you may ask for.

**Jury Charge****1162**

1 For those of you who did take notes during the  
 2 trial, I point out to you and your fellow jurors that your  
 3 notes are simply an aid to memory for the particular juror  
 4 who takes the notes. You are instructed that your notes  
 5 are only a tool to aid your own individual memory and you  
 6 should not compare your notes with other jurors in your  
 7 deliberations. Jurors who did not take notes should not  
 8 be influenced by the fact that other jurors have taken  
 9 notes. Your notes are not evidence. They may be  
 10 inaccurate and are by no means a complete recording of the  
 11 trial testimony. Any difference between a juror's  
 12 recollection and the other juror's notes should be settled  
 13 by asking to have the court reporter read back the  
 14 transcript, for it is the court record rather than any  
 15 juror's notes upon which the jury must base its  
 16 determination of the facts and its verdict.  
 17 It is very important that you are not to  
 18 communicate with anyone outside the jury room about your  
 19 deliberations or about anything touching this case. There  
 20 is only one exception to this rule.  
 21 If it becomes necessary during the deliberations  
 22 to communicate with me, you may send a note, through the  
 23 court security officer, signed by your foreperson or by  
 24 one or more members of the jury. No member of the jury  
 25 should ever attempt to communicate with me except by a

**Jury Charge****1163**

1 signed writing, and I will never communicate with any  
 2 member of the jury on any subject touching the merits of  
 3 the case other than in writing or orally here in open  
 4 court. If you send any notes to the Court, do not  
 5 disclose anything about your deliberations. Specifically,  
 6 do not disclose to anyone, not even to me, how the jury  
 7 stands numerically or otherwise on the question of the  
 8 guilt or innocence of the defendant until after you have  
 9 reached a unanimous verdict or have been discharged.  
 10 If during your deliberations you want to see any  
 11 of the exhibits, they will be sent to you in the jury room  
 12 upon written request. If you want any of the testimony  
 13 read back, that can also be done. But please remember  
 14 that it is not always easy to locate what you might want,  
 15 so be as specific as you possibly can in requesting  
 16 exhibits or portions of testimony which you may want. If  
 17 you request a readback of testimony, please be patient, as  
 18 it may take some time to locate and agree upon the  
 19 specific testimony required.  
 20 I want to emphasize that point. If you send a  
 21 note requesting readback of testimony and I don't bring  
 22 you out immediately, it doesn't mean I didn't get the  
 23 note. I have to consult with the lawyers and the court  
 24 reporters as to what it is you are requesting. As soon as  
 25 the portion is isolated, we will bring you back for the

**Jury Charge**

**1164**

1 readback.  
 2 I have prepared a verdict sheet which will be  
 3 given to you in a moment. The verdict sheet is given to  
 4 you to record your verdict after you have reached a  
 5 verdict as to all counts in the indictment.  
 6 When you have reached a decision, have the  
 7 foreperson sign the verdict form and put the date on, and  
 8 notify the marshal by note that you have reached a  
 9 verdict.  
 10 I reiterate that any verdict you reach must be  
 11 unanimous.  
 12 Your oath sums up your duty, and that is without  
 13 fear or favor to any person, you will well and truly try  
 14 the issues in this case according to the evidence given to  
 15 you in court and the laws of the United States.  
 16 This concludes my instructions. I want to thank  
 17 you for your close and careful attention.  
 18 In a moment, members of the jury, you will  
 19 retire to deliberate after I swear in the marshal. I do  
 20 ask as your first order of business you elect a foreperson  
 21 and send me a note dated and timed, identifying that  
 22 foreperson.  
 23 So you are going to go back into the jury room  
 24 with two documents.  
 25 The first document we will mark Court Exhibit E,

**Jury Charge**

**1166**

1 are again present. That is very important.  
 2 Next I need to discharge the alternate jurors in  
 3 this case, and I will give you some instructions with  
 4 respect to that.  
 5 I will ask you not to discuss the case with  
 6 anyone, and you are not to read or listen to anything with  
 7 regard to the case until you get a call from Michelle or  
 8 the jury department that the case is over.  
 9 The reason for that is if for some reason one of  
 10 the 12 jurors could not continue the deliberations, and as  
 11 long as you continue to follow my instructions, we can  
 12 call you up and ask you to come back to continue in the  
 13 deliberations.  
 14 Please follow that instruction until the case is  
 15 over. Obviously you don't have to sit by the telephone.  
 16 You can go about your normal lives.  
 17 I just want to thank the alternates for their  
 18 service as jurors in this case. And I will ask the court  
 19 security officer to escort both of you back to the jury  
 20 room to get your stuff. And the 12 should remain here and  
 21 the two alternates may do that now, and the 12 will  
 22 proceed to the jury room after the two alternates have  
 23 left.  
 24 Thank you.  
 25 (The alternate jurors are excused.)

**Jury Charge**

**1165**

1 as in Edward, is a copy of the superseding indictment.  
 2 Again, this is only given to you so you will  
 3 have a reference when you are going through each count on  
 4 the verdict sheet. That is the only purpose of this. It  
 5 is merely an accusation and nothing more.  
 6 And I will give you a copy of the verdict form  
 7 to record your verdict on, which we will mark as Court  
 8 Exhibit F.  
 9 The verdict form is self-explanatory. Again,  
 10 your verdict on each count must be unanimous and you must  
 11 consider each count separately.  
 12 I will just have my law clerk give those two  
 13 documents to juror number one.  
 14 I will now give the oath to the court security  
 15 officer.  
 16 Please raise your right hand.  
 17 (Court security officer is sworn to attend to  
 18 the jury.)  
 19 THE COURT: A couple of other things.  
 20 First, when you are in the jury room, you can  
 21 only deliberate when all 12 of you are present.  
 22 If someone uses the restroom, and sometimes  
 23 there are jurors who are smokers and you need to have a  
 24 smoke break, the court security officer will take those  
 25 jurors outside and you have to stop until all 12 of you

**Jury Charge**

**1167**

1 THE COURT: Let me speak to the lawyers at the  
 2 sidebar for a moment.  
 3  
 4 (Whereupon, at this time the following took  
 5 place at the sidebar.)  
 6 THE COURT: Any issues with the charge?  
 7 MR. LATO: No, your Honor.  
 8 MR. LaPINTA: No.  
 9 MR. BODE: No.  
 10 MR. LaPINTA: No.  
 11 THE COURT: Thank you.  
 12  
 13 (Whereupon, at this time the following takes  
 14 place in open court.)  
 15 THE COURT: The lunches should be arriving  
 16 sometime around 12:15.  
 17 Obviously you can continue to deliberate as you  
 18 eat your lunch, or if you wish to take a break as you eat  
 19 the lunch, it is up to you to decide.  
 20 We will just wait until we hear that the  
 21 alternates are out.  
 22 (Whereupon, at this time there was a pause in  
 23 the proceedings.)  
 24 THE COURT: All right, members of the jury,  
 25 please retire to the jury room to begin your

1168

1 deliberations.  
 2 Thank you.  
 3 (The jury exits the courtroom at 11:23 a.m.)  
 4 THE COURT: Everyone can be seated.  
 5 If you can just hang around for a few minutes,  
 6 because a lot of times notes come around in the beginning.  
 7 You don't have to stay by the courtroom, as long as  
 8 Michelle has your cell phone number, you can go down to  
 9 the cafeteria or wherever you want to go.  
 10 I assume all the exhibits are ready to go.  
 11 MR. KABRAWALA: We will go through that right  
 12 now and have counsel agree that they are the right ones.  
 13 THE COURT: All right.  
 14 Why don't you do that now. Thank you.  
 15  
 16 (Whereupon, a recess was taken.  
 17  
 18 (The following takes place at 12:08 p.m.)  
 19 THE COURT: We did receive two notes. The first  
 20 one is just identifying the foreperson as Mr. Raymond.  
 21 And that has been given to both sides.  
 22 The second note, Court Exhibit 2, requests in  
 23 writing the Judge's instructions, and from the prosecution  
 24 the binder containing the evidence in email form.  
 25 Obviously I have the instructions here, which

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1 has been marked as Court Exhibit D.  
 2 Any objection to that going back?  
 3 MR. BODE: No, your Honor.  
 4 MR. LATO: No, your Honor.  
 5 THE COURT: And then with respect to the emails,  
 6 is there agreement as to what those exhibits are?  
 7 MR. LATO: Yes, your Honor.  
 8 I think but for the parenthetical at the end of  
 9 the note would be clear. But when they put the  
 10 parenthetical, in email form, does it become -- it becomes  
 11 unclear. Do they want just the emails? That is the  
 12 problem.  
 13 THE COURT: I assume when they say the binder  
 14 containing the evidence in email form, he held up that  
 15 binder in summation and I assume that that is what they  
 16 are referring to.  
 17 MR. LATO: I do as well, your Honor, feel that.  
 18 But I would ask that you make inquiry as to what they  
 19 want. Do they want the entire binder? We have obviously  
 20 taken out the CD, your Honor.  
 21 THE COURT: There are other things in the  
 22 binder?  
 23 MR. BODE: There are photos in evidence, and  
 24 like the DHL receipts and other evidentiary items.  
 25 THE COURT: I will bring them out and let them

1170

1 know how I'm interpreting the note. If that is okay?  
 2 MR. LATO: Yes, your Honor.  
 3 THE COURT: Why not have a record of what  
 4 exhibit numbers are going back. What exhibit numbers are  
 5 they?  
 6 MR. BODE: We will pull out all the pictures and  
 7 only include the emails, and I will put it on the record.  
 8 THE COURT: Okay.  
 9 MR. BODE: If we could, Mr. Lato is going to ask  
 10 something before I keep pulling things out.  
 11 MR. LATO: May we have a moment to confer with  
 12 Mr. Valerio? He has some comment, and before I speak  
 13 again let me get his position.  
 14 THE COURT: Sure.  
 15 (Defense counsel confer with the defendant.)  
 16 MR. LATO: Your Honor, because in my estimation  
 17 there are at least some reason to question as to whether  
 18 the jury wants only the emails, as opposed to the emails  
 19 and the other things, and because it is Mr. Valerio's  
 20 position that the jury should see everything, I'm asking  
 21 your Honor out of an abundance of caution just to ask the  
 22 jury whether they want only the emails or the other items  
 23 as well.  
 24 THE COURT: What is the government's position on  
 25 that?

1171

1 MR. BODE: I think the note is clear, Judge.  
 2 But I don't have any objection to asking them.  
 3 THE COURT: Okay.  
 4 What I will say to them is that the binder  
 5 contains other exhibits aside from the emails. And I want  
 6 them to send me another note indicating as to whether they  
 7 want all the exhibits in the binder or just the email  
 8 exhibits.  
 9 MR. LATO: Yes, your Honor. Minus the CDs.  
 10 That they cannot have. They can, of course, listen to it  
 11 in the courtroom.  
 12 THE COURT: As I understand it, other than the  
 13 CDs, is the binder then every document in the case?  
 14 MR. BODE: Every documentary exhibit, yes, your  
 15 Honor. And it includes the PowerPoint with the child  
 16 pornography images, and obviously not the CDs. Also the  
 17 redacted images as well. All the photographs from the  
 18 search scene, your Honor.  
 19 MR. LATO: Yes, your Honor.  
 20 THE COURT: At least confirm with Mr. Valerio --  
 21 or I will confirm with him.  
 22 Mr. Valerio, I want to make sure that your  
 23 lawyers are following your request.  
 24 The government has a binder of all the  
 25 documentary evidence that they have submitted into



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1 evidence in the case, which includes emails and all the  
2 documents they have submitted.

3 You want me to ask the jury whether they want  
4 the binder of all the documentary evidence or just the  
5 emails. Do you want me to clarify that? Is that what you  
6 want?

7 Or I can bring them out and say I'm interpreting  
8 your note to only requesting the emails. If you want all  
9 the documents, then you can let me know.

10 MR. LATO: Your Honor, after further  
11 consultation while I was addressing the Court, Mr. LaPinta  
12 was speaking to Mr. Valerio, it is now his request, and  
13 ours as well, that your Honor just give them the emails.

14 THE COURT: Is that correct, Mr. Valerio?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: You don't want me to bring them out?  
17 Just send the emails back?

18 MR. LATO: Yes, your Honor. And if that is not  
19 sufficient, I assume we will get another note from them.

20 THE COURT: I was willing to do that if it was  
21 the defense's request so there is no issue. But I think  
22 the note is clear, the binder containing the evidence in  
23 email form. That is all they want. So I believe this is  
24 the appropriate response.

25 MR. BODE: In terms of our interpretation,

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1 Judge, we are interpreting emails as including their  
2 attachments as well, if there is an attachment to the  
3 email, but obviously not the child pornography.

4 THE COURT: Yes. It goes to the attachments  
5 other than the child pornography.

6 MR. BODE: Yes.

7 Like, there is an email with Mr. Valerio's  
8 picture attached to it, and that is obviously part of the  
9 email.

10 THE COURT: Yes.

11 Do you agree that it should include attachments?

12 MR. LATO: Yes, your Honor.

13 THE COURT: All right.

14 MR. BODE: and headers for emails. I assume  
15 that that is part of an email?

16 THE COURT: Yes.

17 (Whereupon, at this time there was a pause in  
18 the proceedings.)

19 MR. BODE: We are handing up and we agree  
20 this -- these are the correct exhibits, and we can read  
21 into the record the exhibit numbers, and this can go to  
22 the jury.

23 THE COURT: Agreed?

24 MR. LaPINTA: Yes.

25 MR. BODE: 2, 2-B, 2-D, 2-E, 5 --

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1 THE COURT: Why don't you read them right out of  
2 the book, and that would be better.

3 MR. BODE: Yes.

4 MR. LaPINTA: 2, 2-B, 2-D, 2-D, 5, 5-A, 203,  
5 205, 205-A, 206, 208, 209, 210, 211, 211-A, 212, 213, 214,  
6 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225,  
7 226, 227, 228, 229, 229-A, 230, 231, 235, 238, 238-A, 243,  
8 244, 245, 245-A, 245-B, 246, 247, 303, 303-A, 501-D, as in  
9 dog, 502-A, 503-G, 504-E, 551, 552, 552-A, 553, 554,  
10 554-A, 554-B, 554-C, 556, 557, 558, 559, 559-A, 560, 561,  
11 562, 564, 567, 567-A, 568.

12 That's it.

13 THE COURT: All right.

14 So the record should reflect that Mr. LaPinta  
15 read the exhibits that are in the binder going back to the  
16 jury, along with my instructions, which is Court  
17 Exhibit D, as in David.

18 MR. LaPINTA: Thank you.

19 THE COURT: You can all take a lunch break if  
20 you wish to go now.

21 MR. LATO: Before your Honor leaves the bench, I  
22 was conferring with Mr. Valerio while everyone was  
23 reciting the exhibit numbers, and I would like to confer  
24 with Mr. LaPinta so we don't have to come back.

25 THE COURT: Something to do with these exhibits?

1175

1 MR. LATO: Correct.

2 (Defense counsel confer.)

3 MR. LATO: Your Honor, it is Mr. Valerio's  
4 position, as distinct from the opinion of Mr. LaPinta and  
5 myself, that the jury should also get the text messages.  
6 Mr. LaPinta and I have explained to Mr. Valerio  
7 that the email doesn't ask for text messages.

8 THE COURT: You said the email. You mean the  
9 note.

10 MR. LATO: Yes, the note, your Honor, does not  
11 refer to text messages.

12 In addition, Mr. LaPinta and I are in agreement  
13 that the text messages have devastating evidence against  
14 Mr. Valerio. And unless the jury specifically requests  
15 that in a note, it is our position that that note should  
16 not be shown -- I'm sorry, it is our position that the  
17 text messages should not be given without a specific  
18 request.

19 THE COURT: I agree.

20 I want the record to be perfectly clear at this  
21 point that the note refers to the following: The  
22 binder -- from the prosecution the binder containing the  
23 evidence, paren, in email form.

24 This is one of the situations where not only is  
25 the note clear, but they want the evidence in email form,

<p style="text-align: right;"><b>1176</b></p> <p>1 which is a very distinct category of evidence.</p> <p>2 But it is consistent with what happened during</p> <p>3 the summation. Mr. Kabrawala during the summations made</p> <p>4 reference to all the emails, and had a PowerPoint and</p> <p>5 invited them by showing them a binder and saying the</p> <p>6 emails are all in here if you wish to review them.</p> <p>7 That is why I was confused when the parties</p> <p>8 suggested a binder containing all the evidence in the</p> <p>9 case, because I didn't understand the binder to have all</p> <p>10 the evidence -- evidence in the case when Mr. Kabrawala</p> <p>11 was holding it. They referred to only emails and that is</p> <p>12 what they ask for.</p> <p>13 Text messages are different from email messages.</p> <p>14 And I don't think a response as to that, independent as to</p> <p>15 whether it is devastating to Mr. Valerio, the note is not</p> <p>16 requesting that. And I will not send back the text</p> <p>17 messages because it is not responsive to the note. And</p> <p>18 obviously if they start paging through the emails and see</p> <p>19 that there are no text messages, they are certainly more</p> <p>20 than capable to write me another note saying they also</p> <p>21 wanted a text message or messages.</p> <p>22 If memory serves me correctly, they are all</p> <p>23 contained in one document, the text messages?</p> <p>24 MR. BODE: Two documents, there are two</p> <p>25 different types of texts. And they are in two documents.</p>	<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1178</b></p> <p>1 In order to prove the defendant guilty of</p> <p>2 receiving child pornography, the government must prove</p> <p>3 each of the following four elements beyond a reasonable</p> <p>4 doubt:</p> <p>5 First, that the defendant received a visual</p> <p>6 depiction, which term I have already defined for you and</p> <p>7 applies equally here.</p> <p>8 Second, that the visual depiction was</p> <p>9 transported in or affecting interstate or foreign</p> <p>10 commerce.</p> <p>11 Third, that the production of the visual</p> <p>12 depiction involved the use of a minor engaging in sexually</p> <p>13 explicit conduct, and portrayed that minor engaged in that</p> <p>14 conduct.</p> <p>15 Fourth, that the defendant knew that the</p> <p>16 production of the visual depiction involved the use of a</p> <p>17 minor engaged in sexually explicit conduct, and portrayed</p> <p>18 a minor engaged in that conduct.</p> <p>19 I remind you that the government can meet its</p> <p>20 burden of proof of count five by proving that the</p> <p>21 defendant did the acts charged himself, or by proving that</p> <p>22 he aided and abetted another person to receive child</p> <p>23 pornography.</p> <p>24 The first element of receipt of child</p> <p>25 pornography, receiving.</p>
<p style="text-align: right;"><b>1177</b></p> <p>1 THE COURT: Yes.</p> <p>2 It is not responsive to the note to send text</p> <p>3 messages, especially in response to the government's</p> <p>4 summation.</p> <p>5 All right.</p> <p>6 Let's take a lunch break.</p> <p>7 (A luncheon recess is taken at 12:27 p.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;"><b>Jury Charge</b></p> <p style="text-align: right;"><b>1179</b></p> <p>1 The first element of count five that the</p> <p>2 government must prove beyond a reasonable doubt that the</p> <p>3 defendant knowingly received a visual depiction.</p> <p>4 You have already been instructed on the meaning</p> <p>5 of the term visual depiction, and that instruction applies</p> <p>6 equally here.</p> <p>7 To receive a visual depiction means to take</p> <p>8 possession of it. This includes the knowing acceptance of</p> <p>9 a depiction previously requested. Receiving includes the</p> <p>10 downloading of a photograph or video by means of the</p> <p>11 internet.</p> <p>12 The government must prove that the defendant</p> <p>13 received the depiction knowingly. An act is done</p> <p>14 knowingly when it is done voluntarily and intentionally</p> <p>15 and not because of accident, mistake or some other</p> <p>16 innocent reason.</p> <p>17 Second element of receipt of child pornography:</p> <p>18 In or affecting interstate or foreign commerce.</p> <p>19 The second element of count five that the</p> <p>20 government must prove beyond a reasonable doubt is that</p> <p>21 the visual depiction was mailed or transported in or</p> <p>22 affecting interstate or foreign commerce or was produced</p> <p>23 using materials that had been transported in or affecting</p> <p>24 interstate or foreign commerce.</p> <p>25 The indictment alleges that the visual depiction</p>

## Jury Charge

1180

1 was actually transported in interstate or foreign  
 2 commerce. I have already instructed you on what it means  
 3 for a visual depiction to be actually transported in  
 4 interstate or foreign commerce or produced using materials  
 5 that had been transported in or affecting interstate or  
 6 foreign commerce.

7 Third element of receipt of child pornography:  
 8 Visual depiction of sexually explicit conduct.

9 The third element of count five that the  
 10 government must prove beyond a reasonable doubt is that  
 11 the production of the visual depiction involved the use of  
 12 a minor engaging in sexually explicit conduct, as I have  
 13 already explained that term to you, and portrays that  
 14 minor engaged in that conduct.

15 I have already instructed you that the visual  
 16 depiction must be a real person under the age of 18  
 17 engaging in sexually explicit conduct. I reiterate that  
 18 the government does not have to prove the identity of the  
 19 minor or the exact age of the minor. You may consider all  
 20 the evidence in determining whether the depiction  
 21 portrayed an actual person under the age of 18 engaging in  
 22 sexually explicit conduct.

23 Fourth element of receipt of child pornography:  
 24 The defendant acted knowingly.

25 The fourth element of count five that the

## Jury Charge

1182

1 that he or she was aware of the material -- what the  
 2 material depicts. Furthermore, the defendant's belief as  
 3 to the legality or illegality of the material is  
 4 irrelevant.

5 Before you can find that the defendant acted  
 6 intentionally, you must be satisfied beyond a reasonable  
 7 doubt that the defendant acted deliberately and  
 8 purposefully. That is, that the defendant's acts must  
 9 have been the product of the defendant's conscious  
 10 objective rather than the product of a mistake or  
 11 accident. The intent with which an act is done is more  
 12 often shown by the act itself or by a series of acts than  
 13 by statements made long after its occurrence. Frequently  
 14 the acts of individuals speak their intentions more  
 15 clearly than do their words. The adage, actions speak  
 16 louder than words, applies here. Accordingly, knowledge  
 17 and intent are usually established by surrounding facts  
 18 and circumstances as of the time the acts in question  
 19 occurred, or the events took place, and the reasonable  
 20 inferences to be drawn from them.

21 Again, the definition of intentional applies to  
 22 all counts of the indictment in which it is referred to.

23 Count 15, possession of child pornography.

24 Count 15 of the indictment charges the defendant  
 25 with possession of child pornography. Count 15 of the

## Jury Charge

1181

1 government must prove beyond a reasonable doubt is that  
 2 the defendant knew both that the production of the visual  
 3 depiction involved the use of a minor engaging in sexually  
 4 explicit conduct, and that it portrayed a minor engaged in  
 5 that conduct.

6 As I stated before, an act is done knowingly  
 7 when it is done voluntarily and intentionally, and not  
 8 because of accident, mistake or some other innocent  
 9 reason.

10 In this case, the term knowingly refers to an  
 11 awareness of the sexually explicit nature of the material  
 12 and to the knowledge that the visual depiction was in fact  
 13 an act -- of an actual minor engaged in that sexually  
 14 explicit conduct.

15 The government must show that the defendant had  
 16 knowledge of the general nature of the contents of the  
 17 material. The defendant need not have specific knowledge  
 18 of the identity or the actual age of the minor depicted,  
 19 but the defendant must have knowledge or an awareness that  
 20 the material contained a visual depiction of a minor  
 21 engaging in sexually explicit conduct. Such knowledge may  
 22 be shown by direct or circumstantial evidence, or both.  
 23 Eyewitness testimony of the defendant's viewing of the  
 24 material is not necessary to prove his or her awareness of  
 25 its contents. The circumstances may warrant an inference

## Jury Charge

1183

1 indictment reads as follows.

2 From the indictment now.

3 Quote, on or about January 28, 2014, within the  
 4 Eastern District of New York, the defendant Joseph Valerio  
 5 did knowingly and intentionally possess matter containing  
 6 one or more visual depictions, to wit: images in digital  
 7 files, in and affecting interstate and foreign commerce,  
 8 and which visual depictions had been mailed and shipped  
 9 and transported using a means and facility of interstate  
 10 and foreign commerce, and which were produced using  
 11 materials which had been mailed and shipped and  
 12 transported, the production of such visual depictions  
 13 having involved the use of one or more minors engaging in  
 14 sexually explicit conduct, and such visual depictions were  
 15 of such conduct. End quote.

16 Count 15.

17 Count 15 of the indictment charges the defendant  
 18 with Section 2252(a)(4)(B) of Title 18 of the United  
 19 States Code. That section provides, in relevant part:

20 Now quoting the statute.

21 Any person who knowingly possesses or knowingly  
 22 accesses with intent to view one or more books, magazines,  
 23 periodicals, films, videotapes or other matter which  
 24 contain any visual depiction that has been mailed or has  
 25 been shipped or transported using any means or facility of



**Jury Charge**

**1184**

1 interstate or foreign commerce, or in or affecting  
2 interstate or foreign commerce, or which was produced  
3 using materials which have been mailed or so shipped or  
4 transported, by any means, including by computer, if, one,  
5 the producing of such visual depiction involves the use of  
6 a minor engaging in sexually explicit conduct; and, two,  
7 such visual depiction is of such conduct shall be guilty  
8 of a crime, end of quote.

9 In order to prove that the defendant possessed  
10 child pornography, it is necessary that the evidence  
11 establish beyond a reasonable doubt -- obviously the  
12 government has the burden of proof beyond a reasonable  
13 doubt as to each of these elements.

14 First, that the defendant knowingly possessed a  
15 visual depiction, as I have already explained that term to  
16 you.

17 Second, that the visual depiction was  
18 transported in or affecting interstate or foreign  
19 commerce, or the visual depiction was produced using  
20 materials that had been transported in interstate or  
21 foreign commerce.

22 Third, that the production of the visual  
23 depiction involved the use of a minor engaging in sexually  
24 explicit conduct and portrays that minor engaged in that  
25 conduct.

**Jury Charge**

**1185**

1 And, fourth, that the defendant knew that the  
2 production of the visual depiction involved the use of a  
3 minor engaging in sexually explicit conduct and portrayed  
4 a minor engaged in that conduct.

5 The first element that the government must prove  
6 beyond a reasonable doubt is that the defendant knowingly  
7 and intentionally possessed a visual depiction. I have  
8 already defined the terms knowingly, intentionally and  
9 visual depiction, and you should apply those definitions  
10 and instructions here.

11 To possess something means to have it within a  
12 person's control. This does not necessarily mean that the  
13 person must hold it physically, that is, have actual  
14 possession of it. As long as the visual depiction was  
15 within the defendant's control, he possesses it. If you  
16 find that the defendant either had actual possession of  
17 the depiction or that he had power and intention to  
18 exercise control over it, even though it was not in his  
19 physical possession, you may find that the government has  
20 proven possession.

21 The law also recognizes that possession may be  
22 sole or joint. If one person alone possesses it, that is  
23 sole possession. However, it is possible that more than  
24 one person may have the power and intention to exercise  
25 control over the visual depiction. This is called joint

**Jury Charge**

**1186**

1 possession.

2 If you find that the defendant has such power  
3 and intention, then he possessed the depiction even if he  
4 possessed it jointly with another person.

5 The second element of count 15 that the  
6 government must prove beyond a reasonable doubt is that  
7 the visual depiction was mailed or transported in or  
8 affecting interstate or foreign commerce. The indictment  
9 alleges that the particular visual depictions were  
10 transported in or affecting interstate or foreign  
11 commerce, or produced using materials that had been  
12 transported in interstate or foreign commerce.

13 Transmission of photographs or video by means of  
14 the internet constitutes transported in or affecting  
15 interstate commerce. However, you must find beyond a  
16 reasonable doubt that the specific depiction in question  
17 was actually transmitted by means of the internet.

18 The third element of count 15 that the  
19 government must prove beyond a reasonable doubt is that  
20 the production of the visual depiction involved in the use  
21 of an actual minor engaged in sexually explicit conduct,  
22 as I have already explained that term to you, and portrays  
23 that minor engaged in that conduct.

24 The visual depiction must be of a real person  
25 under the age of 18 engaging in sexually explicit conduct,

**Jury Charge**

**1187**

1 the government does not have to prove the identity of the  
2 minor or the exact age of the minor. You may consider all  
3 the evidence, including your viewing of the depiction, in  
4 determining whether the depiction portrayed an actual  
5 person under the age of 18 engaging in sexually explicit  
6 conduct. I have already defined the term sexually  
7 explicit conduct, you should apply that definition here.

8 The fourth element of count 15 that the  
9 government must prove beyond a reasonable doubt is that  
10 the defendant knew both that the production of the visual  
11 depiction involved the use of a minor engaging in sexually  
12 explicit conduct and that it portrayed a minor engaged in  
13 that conduct.

14 As I stated before, an act is done knowingly  
15 when it is done voluntarily and intentionally and not  
16 because of accident, mistake or some other innocent  
17 reason. In this case, the term knowingly refers to an  
18 awareness of the sexually explicit nature of the material,  
19 and to the knowledge that the visual depictions were in  
20 fact of actual minors engaged in that sexually explicit  
21 conduct.

22 The government must show that the defendant had  
23 knowledge of the general nature of the contents of the  
24 material. The defendant need not have specific knowledge  
25 as to the identity or actual age of the underage

**Jury Charge****1188**

1 performer, but the defendant must have knowledge or an  
 2 awareness that the material contained a visual depiction  
 3 of a minor engaging in sexually explicit conduct.  
 4 Such knowledge may be shown by direct or  
 5 circumstantial evidence or both. Eyewitness testimony of  
 6 the defendant's viewing of the material is not necessary  
 7 to prove his awareness of its contents; but the  
 8 circumstances may warrant an inference that he was aware  
 9 of the -- what the material depicts, furthermore, the  
 10 defendant's belief as to the legality or illegality of the  
 11 material is irrelevant.  
 12 That ends part two. You will be happy to note  
 13 part three is shorter. There is about ten minutes to go.  
 14 Everyone okay?  
 15 Part three are my rules regarding deliberations.  
 16 Finally, a few closing remarks.  
 17 Keep in mind that nothing I have said in these  
 18 instructions is intended to suggest to you in any way what  
 19 I think your verdict should be. That is entirely for you  
 20 to decide.  
 21 By way of reminder, I charge you once again that  
 22 it is your responsibility to judge the facts in this case  
 23 only from the evidence presented during the trial and to  
 24 apply the law as I have given it to you to the facts as  
 25 you find them from the evidence.

**Jury Charge****1189**

1 I instruct you that the decision you reach as to  
 2 each element for each charge in the indictment must be  
 3 unanimous; that is, all 12 of you must agree on every  
 4 element in every count. I also instruct you to consider  
 5 each count of the indictment separately. Again, the  
 6 verdict on each element and each count must be unanimous.  
 7 When you retire, it is your duty to discuss the  
 8 case for the purpose of reaching a verdict. Each of you  
 9 must decide the case for yourself. But you should only do  
 10 so after considering all the evidence, listening to the  
 11 views of your fellow jurors and discussing it fully.  
 12 It is important that you reach a verdict, if you  
 13 can do so conscientiously. You should not hesitate to  
 14 reconsider your opinions from time to time and to change  
 15 them if you are convinced that they are wrong.  
 16 However, do not surrender an honest conviction  
 17 as to weight and effect of the evidence simply to arrive  
 18 at a verdict.  
 19 Remember also that your verdict must be based  
 20 solely on the evidence in the case and the law as the  
 21 Court has given it to you, not on anything else. Opening  
 22 statements, closing arguments, or other statements or  
 23 arguments of counsel are not evidence. If your  
 24 recollection of the facts differs from the way counsel has  
 25 stated the facts to be, then your recollection controls.

**Jury Charge****1190**

1 And, finally, bear in mind that the government  
 2 has the burden of proof and that you must be convinced of  
 3 the defendant's guilt beyond a reasonable doubt to return  
 4 a guilty verdict. If you find that this burden has not  
 5 been met, you must return a verdict of not guilty  
 6 The question of possible punishment of the  
 7 defendant is of no concern to the jury and should not, in  
 8 any sense, enter into or influence your deliberations.  
 9 The duty of imposing sentence rests exclusively upon the  
 10 Court. Your function is to weigh the evidence in the case  
 11 and to determine whether or not the defendant is guilty  
 12 beyond a reasonable doubt, solely upon the basis of such  
 13 evidence. Under your oath as jurors, you cannot allow a  
 14 consideration of the punishment which may be imposed upon  
 15 the defendant if he is convicted to influence your verdict  
 16 in any way or in any sense enter into your deliberations.  
 17 Under your oath as jurors, you are not to be  
 18 swayed by sympathy for one side or the other. You are to  
 19 be guided solely by the evidence in this case, and the  
 20 crucial question that you must ask yourselves as you sift  
 21 through the evidence is: Has the government proven the  
 22 guilt of the defendant beyond a reasonable doubt?  
 23 It is for you alone to decide whether the  
 24 government has proven that the defendant is guilty of the  
 25 crimes charged solely on the basis of the evidence and

**Jury Charge****1191**

1 subject to the law as I charge you. It must be clear to  
 2 you that once you let fear, prejudice, bias or sympathy  
 3 interfere with your thinking, there is a risk you will not  
 4 arrive at a true and just verdict.  
 5 If you have a reasonable doubt as to the  
 6 defendant's guilt, you must find a verdict of acquittal.  
 7 But, on the other hand, if you should find that the  
 8 government has met its burden of proving the defendant's  
 9 guilt beyond a reasonable doubt, you should not hesitate  
 10 because of sympathy or any other reason to render a  
 11 verdict of guilty.  
 12 When you get into the jury room before you begin  
 13 your deliberations, your first act will be to select one  
 14 of you to be a foreperson. The foreperson will be  
 15 responsible for signing all communications to the Court  
 16 and for handing it to the court security officer during  
 17 your deliberations. But, of course, his or her vote is  
 18 entitled to no greater weight than any other juror.  
 19 During the trial I permitted the taking of notes  
 20 by those of you who wished to do so. At that time I  
 21 pointed out that while you could take notes, there is no  
 22 need for you doing so because the court reporter takes  
 23 down everything said in the courtroom. And during  
 24 deliberations the court reporter will read back to you any  
 25 portion of the transcript you may ask for.

**Jury Charge****1192**

1 For those of you who did take notes during the  
 2 trial, I point out to you and your fellow jurors that your  
 3 notes are simply an aid to memory for the particular juror  
 4 who takes the notes. You are instructed that your notes  
 5 are only a tool to aid your own individual memory and you  
 6 should not compare your notes with other jurors in your  
 7 deliberations. Jurors who did not take notes should not  
 8 be influenced by the fact that other jurors have taken  
 9 notes. Your notes are not evidence. They may be  
 10 inaccurate and are by no means a complete recording of the  
 11 trial testimony. Any difference between a juror's  
 12 recollection and the other juror's notes should be settled  
 13 by asking to have the court reporter read back the  
 14 transcript, for it is the court record rather than any  
 15 juror's notes upon which the jury must base its  
 16 determination of the facts and its verdict.

17 It is very important that you are not to  
 18 communicate with anyone outside the jury room about your  
 19 deliberations or about anything touching this case. There  
 20 is only one exception to this rule.

21 If it becomes necessary during the deliberations  
 22 to communicate with me, you may send a note, through the  
 23 court security officer, signed by your foreperson or by  
 24 one or more members of the jury. No member of the jury  
 25 should ever attempt to communicate with me except by a

**Jury Charge****1193**

1 signed writing, and I will never communicate with any  
 2 member of the jury on any subject touching the merits of  
 3 the case other than in writing or orally here in open  
 4 court. If you send any notes to the Court, do not  
 5 disclose anything about your deliberations. Specifically,  
 6 do not disclose to anyone, not even to me, how the jury  
 7 stands numerically or otherwise on the question of the  
 8 guilt or innocence of the defendant until after you have  
 9 reached a unanimous verdict or have been discharged.

10 If during your deliberations you want to see any  
 11 of the exhibits, they will be sent to you in the jury room  
 12 upon written request. If you want any of the testimony  
 13 read back, that can also be done. But please remember  
 14 that it is not always easy to locate what you might want,  
 15 so be as specific as you possibly can in requesting  
 16 exhibits or portions of testimony which you may want. If  
 17 you request a readback of testimony, please be patient, as  
 18 it may take some time to locate and agree upon the  
 19 specific testimony required.

20 I want to emphasize that point. If you send a  
 21 note requesting readback of testimony and I don't bring  
 22 you out immediately, it doesn't mean I didn't get the  
 23 note. I have to consult with the lawyers and the court  
 24 reporters as to what it is you are requesting. As soon as  
 25 the portion is isolated, we will bring you back for the

**Jury Charge****1194**

1 readback.

2 I have prepared a verdict sheet which will be  
 3 given to you in a moment. The verdict sheet is given to  
 4 you to record your verdict after you have reached a  
 5 verdict as to all counts in the indictment.

6 When you have reached a decision, have the  
 7 foreperson sign the verdict form and put the date on, and  
 8 notify the marshal by note that you have reached a  
 9 verdict.

10 I reiterate that any verdict you reach must be  
 11 unanimous.

12 Your oath sums up your duty, and that is without  
 13 fear or favor to any person, you will well and truly try  
 14 the issues in this case according to the evidence given to  
 15 you in court and the laws of the United States.

16 This concludes my instructions. I want to thank  
 17 you for your close and careful attention.

18 In a moment, members of the jury, you will  
 19 retire to deliberate after I swear in the marshal. I do  
 20 ask as your first order of business you elect a foreperson  
 21 and send me a note dated and timed, identifying that  
 22 foreperson.

23 So you are going to go back into the jury room  
 24 with two documents.

25 The first document we will mark Court Exhibit E,

**Jury Charge****1195**

1 as in Edward, is a copy of the superseding indictment.

2 Again, this is only given to you so you will  
 3 have a reference when you are going through each count on  
 4 the verdict sheet. That is the only purpose of this. It  
 5 is merely an accusation and nothing more.

6 And I will give you a copy of the verdict form  
 7 to record your verdict on, which we will mark as Court  
 8 Exhibit F.

9 The verdict form is self-explanatory. Again,  
 10 your verdict on each count must be unanimous and you must  
 11 consider each count separately.

12 I will just have my law clerk give those two  
 13 documents to juror number one.

14 I will now give the oath to the court security  
 15 officer.

16 Please raise your right hand.

17 (Court security officer is sworn to attend to  
 18 the jury.)

19 THE COURT: A couple of other things.

20 First, when you are in the jury room, you can  
 21 only deliberate when all 12 of you are present.

22 If someone uses the restroom, and sometimes  
 23 there are jurors who are smokers and you need to have a  
 24 smoke break, the court security officer will take those  
 25 jurors outside and you have to stop until all 12 of you

**Jury Charge****1196**

1 are again present. That is very important.  
 2 Next I need to discharge the alternate jurors in  
 3 this case, and I will give you some instructions with  
 4 respect to that.  
 5 I will ask you not to discuss the case with  
 6 anyone, and you are not to read or listen to anything with  
 7 regard to the case until you get a call from Michelle or  
 8 the jury department that the case is over.  
 9 The reason for that is if for some reason one of  
 10 the 12 jurors could not continue the deliberations, and as  
 11 long as you continue to follow my instructions, we can  
 12 call you up and ask you to come back to continue in the  
 13 deliberations.  
 14 Please follow that instruction until the case is  
 15 over. Obviously you don't have to sit by the telephone.  
 16 You can go about your normal lives.  
 17 I just want to thank the alternates for their  
 18 service as jurors in this case. And I will ask the court  
 19 security officer to escort both of you back to the jury  
 20 room to get your stuff. And the 12 should remain here and  
 21 the two alternates may do that now, and the 12 will  
 22 proceed to the jury room after the two alternates have  
 23 left.  
 24 Thank you.  
 25 (The alternate jurors are excused.)

**Jury Charge****1197**

1 THE COURT: Let me speak to the lawyers at the  
 2 sidebar for a moment.  
 3  
 4 (Whereupon, at this time the following took  
 5 place at the sidebar.)  
 6 THE COURT: Any issues with the charge?  
 7 MR. LATO: No, your Honor.  
 8 MR. LaPINTA: No.  
 9 MR. BODE: No.  
 10 MR. LaPINTA: No.  
 11 THE COURT: Thank you.  
 12  
 13 (Whereupon, at this time the following takes  
 14 place in open court.)  
 15 THE COURT: The lunches should be arriving  
 16 sometime around 12:15.  
 17 Obviously you can continue to deliberate as you  
 18 eat your lunch, or if you wish to take a break as you eat  
 19 the lunch, it is up to you to decide.  
 20 We will just wait until we hear that the  
 21 alternates are out.  
 22 (Whereupon, at this time there was a pause in  
 23 the proceedings.)  
 24 THE COURT: All right, members of the jury,  
 25 please retire to the jury room to begin your

**1198**

1 deliberations.  
 2 Thank you.  
 3 (The jury exits the courtroom at 11:23 a.m.)  
 4 THE COURT: Everyone can be seated.  
 5 If you can just hang around for a few minutes,  
 6 because a lot of times notes come around in the beginning.  
 7 You don't have to stay by the courtroom, as long as  
 8 Michelle has your cell phone number, you can go down to  
 9 the cafeteria or wherever you want to go.  
 10 I assume all the exhibits are ready to go.  
 11 MR. KABRAWALA: We will go through that right  
 12 now and have counsel agree that they are the right ones.  
 13 THE COURT: All right.  
 14 Why don't you do that now. Thank you.  
 15  
 16 (Whereupon, a recess was taken.  
 17  
 18 (The following takes place at 12:08 p.m.)  
 19 THE COURT: We did receive two notes. The first  
 20 one is just identifying the foreperson as Mr. Raymond.  
 21 And that has been given to both sides.  
 22 The second note, Court Exhibit 2, requests in  
 23 writing the Judge's instructions, and from the prosecution  
 24 the binder containing the evidence in email form.  
 25 Obviously I have the instructions here, which

**1199**

1 has been marked as Court Exhibit D.  
 2 Any objection to that going back?  
 3 MR. BODE: No, your Honor.  
 4 MR. LATO: No, your Honor.  
 5 THE COURT: And then with respect to the emails,  
 6 is there agreement as to what those exhibits are?  
 7 MR. LATO: Yes, your Honor.  
 8 I think but for the parenthetical at the end of  
 9 the note would be clear. But when they put the  
 10 parenthetical, in email form, does it become -- it becomes  
 11 unclear. Do they want just the emails? That is the  
 12 problem.  
 13 THE COURT: I assume when they say the binder  
 14 containing the evidence in email form, he held up that  
 15 binder in summation and I assume that that is what they  
 16 are referring to.  
 17 MR. LATO: I do as well, your Honor, feel that.  
 18 But I would ask that you make inquiry as to what they  
 19 want. Do they want the entire binder? We have obviously  
 20 taken out the CD, your Honor.  
 21 THE COURT: There are other things in the  
 22 binder?  
 23 MR. BODE: There are photos in evidence, and  
 24 like the DHL receipts and other evidentiary items.  
 25 THE COURT: I will bring them out and let them

1200

1 know how I'm interpreting the note. If that is okay?  
 2 MR. LATO: Yes, your Honor.  
 3 THE COURT: Why not have a record of what  
 4 exhibit numbers are going back. What exhibit numbers are  
 5 they?  
 6 MR. BODE: We will pull out all the pictures and  
 7 only include the emails, and I will put it on the record.  
 8 THE COURT: Okay.  
 9 MR. BODE: If we could, Mr. Lato is going to ask  
 10 something before I keep pulling things out.  
 11 MR. LATO: May we have a moment to confer with  
 12 Mr. Valerio? He has some comment, and before I speak  
 13 again let me get his position.  
 14 THE COURT: Sure.  
 15 (Defense counsel confer with the defendant.)  
 16 MR. LATO: Your Honor, because in my estimation  
 17 there are at least some reason to question as to whether  
 18 the jury wants only the emails, as opposed to the emails  
 19 and the other things, and because it is Mr. Valerio's  
 20 position that the jury should see everything, I'm asking  
 21 your Honor out of an abundance of caution just to ask the  
 22 jury whether they want only the emails or the other items  
 23 as well.  
 24 THE COURT: What is the government's position on  
 25 that?

1201

1 MR. BODE: I think the note is clear, Judge.  
 2 But I don't have any objection to asking them.  
 3 THE COURT: Okay.  
 4 What I will say to them is that the binder  
 5 contains other exhibits aside from the emails. And I want  
 6 them to send me another note indicating as to whether they  
 7 want all the exhibits in the binder or just the email  
 8 exhibits.  
 9 MR. LATO: Yes, your Honor. Minus the CDs.  
 10 That they cannot have. They can, of course, listen to it  
 11 in the courtroom.  
 12 THE COURT: As I understand it, other than the  
 13 CDs, is the binder then every document in the case?  
 14 MR. BODE: Every documentary exhibit, yes, your  
 15 Honor. And it includes the PowerPoint with the child  
 16 pornography images, and obviously not the CDs. Also the  
 17 redacted images as well. All the photographs from the  
 18 search scene, your Honor.  
 19 MR. LATO: Yes, your Honor.  
 20 THE COURT: At least confirm with Mr. Valerio --  
 21 or I will confirm with him.  
 22 Mr. Valerio, I want to make sure that your  
 23 lawyers are following your request.  
 24 The government has a binder of all the  
 25 documentary evidence that they have submitted into

1202

1 evidence in the case, which includes emails and all the  
 2 documents they have submitted.  
 3 You want me to ask the jury whether they want  
 4 the binder of all the documentary evidence or just the  
 5 emails. Do you want me to clarify that? Is that what you  
 6 want?  
 7 Or I can bring them out and say I'm interpreting  
 8 your note to only requesting the emails. If you want all  
 9 the documents, then you can let me know.  
 10 MR. LATO: Your Honor, after further  
 11 consultation while I was addressing the Court, Mr. LaPinta  
 12 was speaking to Mr. Valerio, it is now his request, and  
 13 ours as well, that your Honor just give them the emails.  
 14 THE COURT: Is that correct, Mr. Valerio?  
 15 THE DEFENDANT: Yes, your Honor.  
 16 THE COURT: You don't want me to bring them out?  
 17 Just send the emails back?  
 18 MR. LATO: Yes, your Honor. And if that is not  
 19 sufficient, I assume we will get another note from them.  
 20 THE COURT: I was willing to do that if it was  
 21 the defense's request so there is no issue. But I think  
 22 the note is clear, the binder containing the evidence in  
 23 email form. That is all they want. So I believe this is  
 24 the appropriate response.  
 25 MR. BODE: In terms of our interpretation,

1203

1 Judge, we are interpreting emails as including their  
 2 attachments as well, if there is an attachment to the  
 3 email, but obviously not the child pornography.  
 4 THE COURT: Yes. It goes to the attachments  
 5 other than the child pornography.  
 6 MR. BODE: Yes.  
 7 Like, there is an email with Mr. Valerio's  
 8 picture attached to it, and that is obviously part of the  
 9 email.  
 10 THE COURT: Yes.  
 11 Do you agree that it should include attachments?  
 12 MR. LATO: Yes, your Honor.  
 13 THE COURT: All right.  
 14 MR. BODE: and headers for emails. I assume  
 15 that that is part of an email?  
 16 THE COURT: Yes.  
 17 (Whereupon, at this time there was a pause in  
 18 the proceedings.)  
 19 MR. BODE: We are handing up and we agree  
 20 this -- these are the correct exhibits, and we can read  
 21 into the record the exhibit numbers, and this can go to  
 22 the jury.  
 23 THE COURT: Agreed?  
 24 MR. LaPINTA: Yes.  
 25 MR. BODE: 2, 2-B, 2-D, 2-E, 5 --



1204

1 THE COURT: Why don't you read them right out of  
2 the book, and that would be better.

3 MR. BODE: Yes.

4 MR. LaPINTA: 2, 2-B, 2-D, 2-D, 5, 5-A, 203,  
5 205, 205-A, 206, 208, 209, 210, 211, 211-A, 212, 213, 214,  
6 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225,  
7 226, 227, 228, 229, 229-A, 230, 231, 235, 238, 238-A, 243,  
8 244, 245, 245-A, 245-B, 246, 247, 303, 303-A, 501-D, as in  
9 dog, 502-A, 503-G, 504-E, 551, 552, 552-A, 553, 554,  
10 554-A, 554-B, 554-C, 556, 557, 558, 559, 559-A, 560, 561,  
11 562, 564, 567, 567-A, 568.

12 That's it.

13 THE COURT: All right.

14 So the record should reflect that Mr. LaPinta  
15 read the exhibits that are in the binder going back to the  
16 jury, along with my instructions, which is Court  
17 Exhibit D, as in David.

18 MR. LaPINTA: Thank you.

19 THE COURT: You can all take a lunch break if  
20 you wish to go now.

21 MR. LATO: Before your Honor leaves the bench, I  
22 was conferring with Mr. Valerio while everyone was  
23 reciting the exhibit numbers, and I would like to confer  
24 with Mr. LaPinta so we don't have to come back.

25 THE COURT: Something to do with these exhibits?

1205

1 MR. LATO: Correct.

2 (Defense counsel confer.)

3 MR. LATO: Your Honor, it is Mr. Valerio's  
4 position, as distinct from the opinion of Mr. LaPinta and  
5 myself, that the jury should also get the text messages.

6 Mr. LaPinta and I have explained to Mr. Valerio  
7 that the email doesn't ask for text messages.

8 THE COURT: You said the email. You mean the  
9 note.

10 MR. LATO: Yes, the note, your Honor, does not  
11 refer to text messages.

12 In addition, Mr. LaPinta and I are in agreement  
13 that the text messages have devastating evidence against  
14 Mr. Valerio. And unless the jury specifically requests  
15 that in a note, it is our position that that note should  
16 not be shown -- I'm sorry, it is our position that the  
17 text messages should not be given without a specific  
18 request.

19 THE COURT: I agree.

20 I want the record to be perfectly clear at this  
21 point that the note refers to the following: The  
22 binder -- from the prosecution the binder containing the  
23 evidence, paren, in email form.

24 This is one of the situations where not only is  
25 the note clear, but they want the evidence in email form,

1206

1 which is a very distinct category of evidence.

2 But it is consistent with what happened during  
3 the summation. Mr. Kabrawala during the summations made  
4 reference to all the emails, and had a PowerPoint and  
5 invited them by showing them a binder and saying the  
6 emails are all in here if you wish to review them.

7 That is why I was confused when the parties  
8 suggested a binder containing all the evidence in the  
9 case, because I didn't understand the binder to have all  
10 the evidence -- evidence in the case when Mr. Kabrawala  
11 was holding it. They referred to only emails and that is  
12 what they ask for.

13 Text messages are different from email messages.  
14 And I don't think a response as to that, independent as to  
15 whether it is devastating to Mr. Valerio, the note is not  
16 requesting that. And I will not send back the text  
17 messages because it is not responsive to the note. And  
18 obviously if they start paging through the emails and see  
19 that there are no text messages, they are certainly more  
20 than capable to write me another note saying they also  
21 wanted a text message or messages.

22 If memory serves me correctly, they are all  
23 contained in one document, the text messages?

24 MR. BODE: Two documents, there are two  
25 different types of texts. And they are in two documents.

1207

1 THE COURT: Yes.

2 It is not responsive to the note to send text  
3 messages, especially in response to the government's  
4 summation.

5 All right.

6 Let's take a lunch break.

7 (A luncheon recess is taken at 12:27 p.m.)

## Proceedings

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## AFTERNOON SESSION

THE COURT: While the jury is deliberating, the record should reflect the lawyers and Mr. Valerio are present.

I want to complete the Rule 29 ruling and place a couple of other rulings, to supplement other rulings with respect to the cases.

To supplement the Rule 29 ruling, I was discussing why each e-mail constitute a separate attempt in the light most favorable to the Government.

With respect to the solicitation and itself being an attempt, the trial I had a few years ago Abdallah, 528 Fed appx. 79 (2nd Cir. 2013). In that case one of the attempted wire fraud charges was the defendant calling up somebody and placing a buy order with respect to a stock sale and I ruled and the Second Circuit affirmed that that act of calling up and asking someone else to place an order through an intermediary constituted in light of the prior dealings and the circumstances surrounding it a substantial step toward the commission of fraud.

And I think it is analogous to the circumstances that we have here for the reasons already indicated.

I did go through each of the e-mails each and of

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that day referenced being one hour on the internet a day.

There's reference to give me some really racy cell phone videos with your daughter tonight:

The jury certainly concluded based on the substance of the e-mails an attempt was made on January 23 that Kalichenko received that and whether or not, you know, whether or not the videos were on the shelf already, or that she had the videos, she sent them.

And then on the 24th, Count 7, more requests are being made. So even though they are a day apart they are referencing future action and it is also referencing something will be done on a multiday basis.

Count 8, March 28, 2012, Exhibit 211-A, again there is a direction on specific sex acts, reference to money, I'll send out \$100. To who and where do you want me to send it?

So that can constitute a separate attempt.

Count 1, April 4, 2012, Exhibit 560, reference to seeking pictures of [REDACTED]. And there's a reference to sending Kalichenko from Turkey to Moscow. That could constitute a separate attempt.

Count 10, July 16, 2012, Exhibit 205, referenced the videos you sent me, perfect. That's the one that references a script and requests specific sex acts.

And there's reference to money. Tomorrow I'll

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themselves could be separate attempts and weren't connected in a way that made them merge. I'll go through the details but very briefly.

Count 6, and I believe it is Exhibit 558, January 23, 2012, a discussion in that e-mail about videos with [REDACTED] specific sex acts with [REDACTED] referenced to sending some money. Today I will send out some money, you will follow these steps.

That certainly would be sufficient.

There's a discussion that popped up in there.

Count 7, January 24, 2012, Exhibit 559, again, references to specific sex acts with [REDACTED], references to picking up money on Wednesday. The MTCN number is provided in that one, and again on this issue of the fact of Count 6 or 7 are one day apart. If you actually look at the e-mails, Count 6 was on Monday, Count 7 was on Tuesday.

On Tuesday there is a reference to Wednesday on the e-mail and the January 23rd e-mail. This is not word-for-word, you only go to the internet place Monday, Wednesday, Friday. When you're there you start with an e-mail to there and when you leave before dark you send me one when you leave.

And there is a discussion on certain acts of

[REDACTED] each night before bed -- there's an earlier e-mail

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wire you more cash in the day. Especially in the context of all the other e-mails can constitute an attempt.

Count 11, July 22, 2012, Exhibit 205.

July 22nd, as I said, it seems to be an inquiry to a July 16th memo by Kalichenko referencing having made five other videos for you. We'll send the videos today.

References going to the pool. I think this is in the context of July 21st e-mail from the joeval5@optonline.net saying I got the videos of you and [REDACTED] send the rest to my e-mail.

You didn't follow my instruction directions.

Didn't get to the pool, shower, etcetera.

Although Count 10 was July 16th, Count 11 is July 22nd, the jury could certainly find that additional video in the July 16th was an attempt to create some videos or obtain some videos, in this situation to create videos, and having received some videos in the interim, Count 11, July 22nd, is an attempt to receive and have more videos created.

Count 12, September 6, 2012, Exhibit 229, send me the usual videos of you and sweet [REDACTED], and then again specific sex acts are requested where \$1,000 is provided. That e-mail could certainly constitute a separate attempt.

Finally Count 13, Exhibit 206, referencing

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1 having given \$1200, produced nothing for me, and this one,  
2 again, consistent with the other e-mails request each  
3 morning and night you will send me a cell phone video of  
4 you waking up with your daughter and there are references  
5 to sexual acts. "If I don't see this each day," and he  
6 makes certain comments.

7 So it's clear based upon the e-mail the jury can  
8 rationalize this, there are ongoing videos being requested  
9 and attempts for additional videos on each and every one  
10 of these counts. So I don't believe the counts are  
11 multiplicitas between each other.

12 On the final issue that we've already discussed,  
13 and again I'll put the case law on the record of whether  
14 or not these counts, the attempt counts are multiplicitas  
15 and overlap with Count 2, the sexual exploitation count.

16 This argument -- there is nothing improper about  
17 charging the way Count 3 is charged with multiple --  
18 excuse me, Count 2, that basically even though the  
19 Government is alleging there are multiple acts of sexual  
20 exploitation during that period they charge it as one  
21 substantive count.

22 In the case of United States versus Anson, 304  
23 Fed.Appx. 1 (2d Cir. 2008) made clear, and this is called  
24 duplicitous counts, counts that join two or more distinct  
25 crimes in a single count. In this case it's a child

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1 pornography case and that criminal charges may aggravate  
2 multiple individual actions that otherwise could be  
3 charged as discrete offenses as long as all the actions  
4 are a part of a single scheme. Citing U.S. v. Maloney,  
5 287 F.3d 282, Second Circuit 2002. Here certainly the  
6 Government's proof could support a finding this is one  
7 single scheme creating multiple child pornography videos  
8 involving [REDACTED] and, therefore, the sexual exploitation  
9 charge could be charged in the aggregate even though the  
10 Government is alleging there are multiple acts of sexual  
11 exploitation during that time period so there is no  
12 duplicitous.

13 In terms of Mr. Lato's objection to  
14 multiplicity, first it is not waived because it was not  
15 raised as part of the trial, that defects in the  
16 indictment, US v. Chacko, 169 F.3d 140, Second Circuit  
17 1999, said that if you don't assert at all at the district  
18 court level, there's a double jeopardy exception which  
19 essentially is what it is. If you don't raise it all at  
20 the district court level it could be waived, but it  
21 doesn't have to be necessarily a pretrial motion. That  
22 case was made after the jury rendered its verdict.

23 The circuits held it was not waived here, it was  
24 made at the end of the Government's case but certainly was  
25 not waived. But on the substantive issue, first as I

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1 noted, the Government is allowed all theories in the case  
2 because the evidence could support one theory and not the  
3 other if the jury concluded that Ms. Kalichenko had the  
4 videos already made, they could find attempts for each of  
5 those counts without finding any sexual exploitation of  
6 [REDACTED]

7 So there is evidence that supports both  
8 theories.

9 In terms how you deal with that, there's a case  
10 called U.S. v. Zvi, 168 F.3d 49 (2d Cir. 1999) and in that  
11 case the Second Circuit discusses this in detail and says  
12 ordinarily the appropriate remedy, if you have that  
13 situation, that's with respect to a money laundering case,  
14 but if there is this multiplicitas issue, the appropriate  
15 remedy to remand the multiplicitas counts and to adjust  
16 the sentence accordingly.

17 Certainly I think Mr. Lato is correct, the  
18 Government might even concede this if there were a  
19 conviction on the sexual exploitation counts. Certainly  
20 an attempt to commit a crime and a completed crime would  
21 create a double jeopardy problem if someone were sentenced  
22 on both. If there is any doubt on that, U.S. v. Rust,  
23 Eighth Circuit case, 650 F.2d, a 1981 case, where they  
24 said it is also clear that defendant may not be convicted  
25 in both the attempt and the completed crime because all

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1 the elements of the attempt were included in the completed  
2 offense and a dual conviction would amount to double  
3 jeopardy.

4 Based upon the Second Circuit decision in Zvi, I  
5 think the appropriate remedy here if there were a  
6 conviction on both the substantive crimes and the  
7 attempted counts would be to vacate the attempted accounts  
8 to avoids a double jeopardy problem but we'll deal with  
9 that if that occurs.

10 That's the Court's ruling with respect to the  
11 Rule 29 motion. I did want to place some cases on the  
12 record.

13 Mr. LaPinta did an expert sidebar and came up  
14 with a 10th Circuit case.

15 MR. LAPINTA: 9th.

16 THE COURT: I'm talking about the subscriber  
17 issue.

18 MR. LAPINTA: Foundation.

19 THE COURT: I thought it was a 10th Circuit. I  
20 did look it up and I looked at Second Circuit case law on  
21 that issue and I think the rulings that I made -- your  
22 objection was correct to some extent and the rulings I  
23 made are completely consistent with the Second Circuit  
24 cases.

25 So, there were two objections. The first one



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1 was to the Cablevision subscriber information. And the  
 2 case in the Second Circuit that addresses this issue  
 3 whether it was a hotel guest card, the case is United  
 4 States v. Lieberman, 637 F.2d 95 (2d Cir. 1980), and in  
 5 that case the circuit made clear if someone is filling out  
 6 information such as a hotel guest card it would not fall  
 7 within the business records exception because it would  
 8 contain unreliable hearsay within the record itself.

9 However, the Second Circuit made clear in that  
 10 case that if a person were required to prove, provide  
 11 identification, that would change the analysis. So there  
 12 is reference if there was a way to verify by examining a  
 13 driver's license or other form of identification that  
 14 would be a different analysis. "If such verification is  
 15 obtained by the employee we see no reason why the guest  
 16 card would be filled in by the guest himself, would not be  
 17 qualified as a business record and not be admissible for  
 18 truth of the statement. "

19 With respect to the Cablevision records, it is  
 20 consistent with that opinion because there were testimony,  
 21 certainly while they didn't maintain a copy of the  
 22 identification, that was a business practice to require  
 23 identification be shown, and also because of the nature of  
 24 Cablevision in and of itself, you are having service  
 25 provided to a particular location, it would make sense

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1 that it would be reliable because otherwise as the witness  
 2 said we would need to verify the house or location that we  
 3 were providing the service to.

4 In any event the request for identification is  
 5 sufficient to come within the business records requirement  
 6 as articulated in Lieberman.

7 The Western Union records, however, we would  
 8 have a problem because it was clear from the  
 9 cross-examination that no verification whatsoever is done.  
 10 In fact someone can go on line and put any name in and  
 11 have money wired to someone else under any name. So that  
 12 certainly, those Western Union documents could not come in  
 13 as business records for the truth of the identity of the  
 14 person whose name is reflected in the records. And this  
 15 is discussed in a Southern District case, United States v.  
 16 Zapata, 356 F.Supp.2d 323 (S.D.N.Y. 2005) and the Court in  
 17 that case goes through a whole bunch of cases in the  
 18 country and says that although it can't come in as a  
 19 business record it can come in for the nonhearsay purpose  
 20 of establishing that somebody put that name on a record  
 21 and sent money, but you have to give a limiting  
 22 instruction to the jury to make sure they understand that  
 23 is not being offered for the truth but simply that money  
 24 was sent with someone putting that name on there and the  
 25 Government had to prove through independent evidence who

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1 that person is, and that is exactly what the defense  
 2 requested and what that is, exactly what I did, I gave an  
 3 instruction to the jury that Western Union records, the  
 4 names on those records cannot be used for the truth, the  
 5 Government had to prove who sent them through other means.  
 6 So I managed to get that one read.

7 MR. BODE: We did that with the e-mails with the  
 8 MTCN numbers reflected in the records that were in his  
 9 house.

10 THE COURT: And there was an objection with  
 11 respect to the opening statement, there was certain  
 12 language in the e-mail --

13 (Jury note handed to the Court.)

14 THE COURT: We have another note. We'll mark  
 15 the note as Court Exhibit 3. Show it to the lawyers. It  
 16 indicates that the jury has reached a verdict.

17 MR. KABRAWALA: Do you have a blank verdict form  
 18 so we can follow along?

19 (Clerk distributes copies of requested verdict  
 20 forms.)

21 THE COURT: Both sides have been provided with a  
 22 copy of the blank verdict form so they can follow the  
 23 verdict.

24 Let's bring in the jury so we can take the  
 25 verdict.

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1 (Whereupon, the jury at this time enters the  
 2 courtroom.)

3 (Time noted 2:30 p.m.)

4 THE COURT: I received your court note,  
 5 Exhibit 3: The jury has reached a verdict. Ms. Raymond,  
 6 has the jury reached a verdict as to each count?

7 THE FOREPERSON: Yes, your Honor.

8 THE COURT: Ms. Raymond, please remain standing  
 9 for the reading of the verdict.

10 As to Count 1, Conspiracy to Sexually Exploit a  
 11 Child.

12 How do you find the defendant? Is the jury's  
 13 unanimous verdict guilty or not guilty?

14 THE FOREPERSON: Guilty.

15 THE COURT: Count 2, Sexual Exploitation of a  
 16 Child.

17 How do you find the defendant? Is the jury's  
 18 unanimous verdict guilty or not guilty?

19 THE FOREPERSON: Guilty.

20 THE COURT: As to Count 3, Sexual Exploitation  
 21 of a Child, how do you find the defendant? Is the jury's  
 22 unanimous verdict guilty or not guilty?

23 THE FOREPERSON: Guilty.

24 THE COURT: As to Count 4, Transportation of  
 25 Child Pornography. How do you find the defendant? Is the

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1 jury's unanimous verdict guilty or not guilty.  
 2 THE FOREPERSON: Guilty.  
 3 THE COURT: As to Count 5, Receipt of Child  
 4 Pornography. How do you find the defendant? Is the  
 5 jury's unanimous verdict guilty or not guilty.  
 6 THE FOREPERSON: Guilty.  
 7 THE COURT: As to Count 6, Attempted Sexual  
 8 Exploitation of a Child, January 23, 2012, how do you find  
 9 the defendant? Is the jury's unanimous verdict guilty or  
 10 not guilty?  
 11 THE FOREPERSON: Guilty.  
 12 THE COURT: As to Count 7, Attempted Sexual  
 13 Exploitation of a Child, January 24, 2012, how do you find  
 14 the defendant? Is the jury's unanimous verdict guilty or  
 15 not guilty?  
 16 THE FOREPERSON: Guilty  
 17 THE COURT: Count 8, Attempted Sexual  
 18 Exploitation of a Child, March 28, 2012, how do you find  
 19 the defendant?  
 20 Is the jury's unanimous verdict guilty or not  
 21 guilty?  
 22 THE FOREPERSON: Guilty.  
 23 THE COURT: Count 9, Attempted Sexual  
 24 Exploitation of a Child, April 4, 2012. How do you find  
 25 the defendant?

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1 Is the jury's unanimous verdict guilty or not  
 2 guilty?  
 3  
 4 THE FOREPERSON: Guilty.  
 5 THE COURT: Count 10, Attempted Sexual  
 6 Exploitation of a Child, July 16, 2012. How do you find  
 7 the defendant?  
 8 Is the jury's unanimous verdict guilty or not  
 9 guilty?  
 10 THE FOREPERSON: Guilty.  
 11 THE COURT: Count 11, Attempted Sexual  
 12 Exploitation of a Child, July 22, 2012. How do you find  
 13 the defendant?  
 14 Is the jury's unanimous verdict guilty or not  
 15 guilty?  
 16 THE FOREPERSON: Guilty  
 17 THE COURT: Count 12, Attempted Sexual  
 18 Exploitation of a Child, September 6, 2012. How do you  
 19 find the defendant?  
 20 Is the jury's unanimous verdict guilty or not  
 21 guilty?  
 22 THE FOREPERSON: Guilty  
 23 THE COURT: County 13, Attempted Sexual  
 24 Exploitation of a Child, September 27, 2012. How do you  
 25 find the defendant?

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1 Is the jury's unanimous verdict guilty or not  
 2 guilty?  
 3 THE FOREPERSON: Guilty  
 4 THE COURT: Count 14, Sexual Exploitation of a  
 5 Child. How do you find the defendant.  
 6 Is the jury's unanimous verdict guilty or not  
 7 guilty?  
 8 THE FOREPERSON: Guilty  
 9 THE COURT: Count 15, Possession of Child  
 10 Pornography. How do you find the defendant?  
 11 Is the jury's unanimous verdict guilty or not  
 12 guilty?  
 13 THE FOREPERSON: Guilty  
 14 THE COURT: You may be seated, Ms. Raymond.  
 15 Please listen to the verdicts as recorded by the  
 16 Court.  
 17 Count 1, Conspiracy to Sexually Exploit a Child.  
 18 How do you find the defendant? The jury's unanimous  
 19 verdict is guilty.  
 20 Count 2, Sexual Exploitation of a Child. How do  
 21 you find the defendant?  
 22 The jury's unanimous verdict is guilty.  
 23 Count 3, Sexual Exploitation of a Child. How do  
 24 you find the defendant? The jury's unanimous verdict,  
 25 guilty.

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1 As to Count 4, Transportation of Child  
 2 Pornography. How do you find the defendant? The jury's  
 3 unanimous verdict is guilty.  
 4 As to Count 5, Receipt of Child Pornography.  
 5 How do you find the defendant? The jury's unanimous  
 6 verdict is guilty.  
 7 As to Count 6, Attempted Sexual Exploitation of  
 8 a Child, January 23, 2012. How do you find the defendant?  
 9 The jury's unanimous verdict is guilty.  
 10 As to Count 7, Attempted Sexual Exploitation of  
 11 a Child, January 24, 2012. How do you find the defendant?  
 12 The jury's unanimous verdict is guilty.  
 13 Count 8, Attempted Sexual Exploitation of a  
 14 Child, March 28, 2012. How do you find the defendant?  
 15 The jury's unanimous verdict is guilty.  
 16 THE COURT: Count 9, Attempted Sexual  
 17 Exploitation of a Child, April 4, 2012. How do you find  
 18 the defendant?  
 19 The jury's unanimous verdict is guilty.  
 20 Count 10, Attempted Sexual Exploitation of a  
 21 Child, July 16, 2012. How do you find the defendant?  
 22 The jury's unanimous verdict is guilty.  
 23 Count 11, Attempted Sexual Exploitation of a  
 24 Child, July 22, 2012. How do you find the defendant?  
 25 The jury's unanimous verdict is guilty.

## Proceedings

1224

1 Count 12, Attempted Sexual Exploitation of a  
 2 Child, September 6, 2012. How do you find the defendant?  
 3 The jury's unanimous verdict is guilty.  
 4 Count 13, Attempted Sexual Exploitation of a  
 5 Child, September 27, 2012. How do you find the defendant?  
 6 The jury's unanimous verdict is guilty.  
 7 Count 14, Sexual Exploitation of a Child. How  
 8 do you find the defendant?  
 9 The jury's unanimous verdict is guilty.  
 10 Count 15, Possession of Child Pornography. How  
 11 do you find the defendant?  
 12 The jury's unanimous verdict is guilty.  
 13 THE COURT: Members of the jury, is that your  
 14 verdict, your unanimous verdict, so say you all.  
 15 THE JURY: Yes.  
 16 THE COURT: I'll poll the jury.  
 17 Juror 1, is that your verdict?  
 18 JUROR 1: Yes.  
 19 THE COURT: Juror 2, is that your verdict?  
 20 JUROR 2: Yes.  
 21 THE COURT: Juror 3, is that your verdict?  
 22 JUROR 3: Yes.  
 23 THE COURT: Juror 4, is that your verdict?  
 24 JUROR 4: Yes.  
 25 THE COURT: Juror 5, is that your verdict?

## Proceedings

1225

1 JUROR 5: Yes.  
 2 THE COURT: Juror 6, is that your verdict?  
 3 JUROR 6: Yes.  
 4 THE COURT: Juror 7, is that your verdict?  
 5 JUROR 7: Yes.  
 6 THE COURT: Juror 8, is that your verdict?  
 7 JUROR 8: Yes.  
 8 THE COURT: Juror 9, is that your verdict?  
 9 JUROR 9: Yes.  
 10 THE COURT: Juror 10, is that your verdict?  
 11 JUROR 10: Yes.  
 12 THE COURT: Juror 11, is that your verdict?  
 13 JUROR 11: Yes.  
 14 THE COURT: Juror 12, is that your verdict?  
 15 JUROR 12: Yes.  
 16 THE COURT: I'll have the have the attorneys  
 17 approach sidebar.  
 18 (Whereupon, at this time the following took  
 19 place at the sidebar.)  
 20 (Continued.)  
 21  
 22  
 23  
 24  
 25

## Proceedings

1226

1 THE COURT: I'll have the lawyers inspect the  
 2 verdict sheet.  
 3 MR. KABRAWALA: So inspected. Thank you.  
 4 THE COURT: So in terms of the forfeiture phase,  
 5 shall we proceed?  
 6 MR. LATO: Yes, your Honor.  
 7 THE COURT: I'll tell the jury that it will be  
 8 very brief.  
 9 MR. LATO: Five minutes. I'll explain this what  
 10 the Government is seeking.  
 11 MR. LAPINTA: This is part of the jury  
 12 instruction.  
 13 THE COURT: Yes. Just so what the issue is.  
 14 MR. LAPINTA: Yes.  
 15 THE COURT: Okay.  
 16 MR. KABRAWALA: Thank you, your Honor.  
 17 (End of sidebar conference.)  
 18 (Continued.)  
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 24  
 25

## Proceedings

1227

1 THE COURT: Members of the jury now that you've  
 2 returned a verdict as to each count of the indictment,  
 3 there is one additional issue that you'll need to decide  
 4 and that is the issue of forfeiture. Let me explain that  
 5 to you.  
 6 Property may be subject to forfeiture whether or  
 7 not the property has been seized by the United States. In  
 8 this case the Government seeks forfeiture of specific  
 9 property that is subject to forfeiture as property that  
 10 contains visual depictions of the sexual exploitation of  
 11 children and is property used or intended to use to commit  
 12 or provoke the commission of sexual exploitation of  
 13 children. The property includes the Government is seeking  
 14 forfeiture of, (A) One premier desk top computer serial  
 15 number P 80003011134.  
 16 (B) a one-4 gigabyte SD card, no serial number.  
 17 (C) the real property and premises located at  
 18 3 High Gate Drive, Smithtown, New York 11787, together  
 19 with its respective buildings, appurtenances,  
 20 improvements, fixtures, attachments, easements and  
 21 furnishings designated as district 473400, section 50,  
 22 block 5 and lot 23 on the Suffolk County tax map.  
 23 So the Government in connection with these  
 24 crimes of conviction is seeking forfeiture of that  
 25 property.

<p style="text-align: center;"><b>Summations - Kabrawala</b></p> <p style="text-align: right;"><b>1228</b></p> <p>1 The way we'll proceed with respect to that is</p> <p>2 neither side has any additional evidence to present on</p> <p>3 that. So just as we did with the trial, I'll give the</p> <p>4 lawyers an opportunity to make closing arguments to you</p> <p>5 with respect to this forfeiture issue. They've advised me</p> <p>6 they both intend to be very brief and I'll give you ten or</p> <p>7 15 minutes of instructions on the law with respect to</p> <p>8 forfeiture that I'll give you and you'll return to the</p> <p>9 jury room to commence your deliberations on the</p> <p>10 forfeiture.</p> <p>11 So the Government will go first.</p> <p>12 MR. KABRAWALA: Thank you again, ladies and</p> <p>13 gentlemen for your services for paying close attention</p> <p>14 during the guilt phase of this trial.</p> <p>15 Your service is nearly complete and I'll be very</p> <p>16 brief. There is one more part that is left and that is a</p> <p>17 very short portion but it is also very important.</p> <p>18 Soon the judge will instruct you that the</p> <p>19 Government is entitled to seek forfeiture of property that</p> <p>20 was used to facilitate the crimes for which the defendant</p> <p>21 has been found guilty.</p> <p>22 Basically forfeiture means that the Government</p> <p>23 is entitled to take the property used to commit the crime.</p> <p>24 There's three properties, as the judge</p> <p>25 mentioned, that the Government is seeking. The first one</p>	<p style="text-align: center;"><b>Summations - Kabrawala</b></p> <p style="text-align: right;"><b>1230</b></p> <p>1 hidden. It was all in the defendant's home, including the</p> <p>2 outfits and the hidden cameras.</p> <p>3 Now, for that reason, for those reasons, that's</p> <p>4 why the Government seeks forfeiture of the three</p> <p>5 properties that we've described.</p> <p>6 They were used to facilitate the crime. They</p> <p>7 were used in commission of the crime, and the Government</p> <p>8 gets to forfeit them.</p> <p>9 The judge will instruct you about the law on</p> <p>10 forfeiture and the burden of proof. It is different. The</p> <p>11 burden of proof is referred to as a preponderance of the</p> <p>12 evidence. What that means, as the judge will instruct you</p> <p>13 and you should follow the judge's instructions, a</p> <p>14 preponderance of the evidence is simply that it was more</p> <p>15 likely than not that the items, the three property items</p> <p>16 described were used to commit the crime. That it is more</p> <p>17 likely than not that the defendant used those properties</p> <p>18 to facilitate the crime.</p> <p>19 Because the evidence amply demonstrates that</p> <p>20 those three property items were used to facility the</p> <p>21 crime, the Government seeks forfeiture of those items and</p> <p>22 we ask that you return a verdict of forfeiture.</p> <p>23 Thank you.</p> <p>24 THE COURT: You'll now hear the arguments of the</p> <p>25 defense.</p>
<p style="text-align: center;"><b>Summations - Kabrawala</b></p> <p style="text-align: right;"><b>1229</b></p> <p>1 is is the computer that you heard about, this computer,</p> <p>2 Government's Exhibit 400.</p> <p>3 The second one is the SD, Samsung memory card on</p> <p>4 which the pictures of [REDACTED] were found.</p> <p>5 The third is the residence, 3 High Gate Drive in</p> <p>6 Smithtown, New York, that you've heard a lot about during</p> <p>7 this trial.</p> <p>8 Now, you've heard that the videos, the</p> <p>9 pornographic videos of [REDACTED], the Ukrainian toddler, were</p> <p>10 located on a computer, that computer, Government's</p> <p>11 Exhibit 400, that is, the pornographic pictures of [REDACTED]</p> <p>12 that were located on an SD card. Both of those items were</p> <p>13 found in the defendant's home at 3 High Gate Drive. The</p> <p>14 defendant doesn't get those properties back. He used them</p> <p>15 to commit the crime.</p> <p>16 I don't need to go into what was on the</p> <p>17 computer; you've seen the images and read the e-mail. I</p> <p>18 don't need to go into what was on the SD card; you've seen</p> <p>19 the images and heard the testimony.</p> <p>20 The house, that is where the defendant used his</p> <p>21 computer to communicate with Kalichenko. That's where the</p> <p>22 computer was found. That's where all the evidence was</p> <p>23 found. That's also where the stage was found, the hidden</p> <p>24 cameras were found. That's where the Samsung digital</p> <p>25 video camera was found in the basement, in the ceiling</p>	<p style="text-align: center;"><b>Summations - Lato</b></p> <p style="text-align: right;"><b>1231</b></p> <p>1 MR. LATO: Thirty seconds, your Honor.</p> <p>2 THE COURT: Sure.</p> <p>3 (Counsel confer.)</p> <p>4 MR. LATO: Good afternoon, ladies and gentlemen.</p> <p>5 This will be about three minutes.</p> <p>6 As Judge Bianco will instruct you, the question</p> <p>7 on forfeiture is whether the property was used to commit</p> <p>8 the crime. Don't even waste your time on the Dell desktop</p> <p>9 or on the memory card. We concede that. The only thing</p> <p>10 we object to here is the house, and here's why.</p> <p>11 The Government's forfeiture allegation is</p> <p>12 overbroad and at the same time insufficient, and here's</p> <p>13 why. The Government for some reason wants that little</p> <p>14 memory card from the Samsung camcorder which is for all</p> <p>15 practical purposes worthless but they are not even seeking</p> <p>16 to forfeit the camcorder. Had they done so we could</p> <p>17 concede that too because based upon on your verdict the</p> <p>18 camcorder would be forfeitable because that was used to</p> <p>19 make child pornography.</p> <p>20 The Dell desktop computer is obviously</p> <p>21 forfeitable because based on your verdict the inbox on</p> <p>22 that computer was child pornography. But the Government</p> <p>23 is not seeking to get the camcorder which based upon your</p> <p>24 verdict was used to make child pornography. It is also</p> <p>25 not seeking the stage or the couch in the house or in the</p>

**Summations - Lato****1232**

1 basement which if that were before you we would concede  
 2 based upon your verdict would be forfeitable. But the  
 3 house itself was not used to make child pornography. In  
 4 other words, the upstairs wasn't used; the backyard wasn't  
 5 used; there were discrete items in the house that were  
 6 used.

7 By way of example, if this house were on a  
 8 100-acre farm, the Government might be here asking you to  
 9 forfeit the whole 100-acre farm. The allegation of  
 10 forfeiture is too broad. So, computer, forfeited; memory  
 11 card forfeited.

12 Had the Government asked for the camcorder, had  
 13 they asked for the stage, any cameras in the house, all  
 14 forfeited.

15 The house itself, no. It was not an  
 16 instrumentality of the crime. It was not used to commit  
 17 the crime.

18 Thank you.

19 THE COURT: Okay. The Government is entitled to  
 20 a brief rebuttal on summation.

21 (Continued.)  
 22  
 23  
 24  
 25

**Rebuttal - Kabrawala****1233**

1 MR. KABRAWALA: Thank you, Judge.

2 The reason the Government wants the computer and  
 3 the SD card is because we want to destroy them. The  
 4 Government wants to destroy the child pornography images  
 5 and all traces of them that were on those two items.

6 You have heard evidence that the house itself  
 7 was used in the commission of the crime. It served as a  
 8 backdrop. You saw pictures of it, countless pictures of  
 9 the basement, the furniture. The Government is not  
 10 seeking forfeiture of the furniture; don't let defense  
 11 counsel distract you. This is a case about two children  
 12 who were sexually exploited on video for the defendant and  
 13 now he has been found guilty.

14 The house was used to create images of one of  
 15 those children, [REDACTED]. The basement was used as a  
 16 backdrop for the sexually explicit pictures of [REDACTED] and  
 17 upstairs on the second floor is where the defendant used  
 18 that computer and stored on the SD card to store images of  
 19 child pornography and communicate with his co-conspirator  
 20 Kalichenko.

21 Thank you very much again for your services.

22 THE COURT: Do the lawyers wish to speak to me  
 23 before my instructions?

24 MR. KABRAWALA: No, your Honor.

25 MR. LAPINTA: No, your Honor.

**Jury Charge****1234**

1 THE COURT: About 15 minutes. And if you want a  
 2 copy of my instructions you can request it during your  
 3 deliberations.

4 We'll mark a copy of this as Court Exhibit E.

5 MR. BODE: We used E for the indictment and --  
 6 we use G.

7 THE COURT: G.

8 Ladies and gentlemen of the jury. I know you  
 9 have labored long and hard. In view of your verdict the  
 10 defendant Joseph Valerio is guilty of the offenses charged  
 11 in the indictment.

12 You have one more task to perform before you are  
 13 discharged.

14 In a case of this nature, the Government has a  
 15 right to seek forfeiture of certain property that is  
 16 alleged to be related in certain ways to the offenses of  
 17 which you have found the defendant guilty.

18 Accordingly, you must render special verdicts  
 19 concerning certain property that the Government has  
 20 alleged is subject to forfeiture to the United States.

21 In your consideration of the forfeiture  
 22 allegation in the indictment you are instructed that your  
 23 previous determination that the defendant is guilty of  
 24 having committed the offenses alleged in the indictment is  
 25 final and conclusive. You must not seek to discuss or

**Jury Charge****1235**

1 determine anew the guilt or innocence of the defendant.  
 2 All the previous instructions regarding direct and  
 3 circumstantial evidence, credibility of witnesses and duty  
 4 to deliberate apply with respect to your verdicts  
 5 regarding forfeiture.

6 Let me explain to you the law of forfeiture.  
 7 Pursuant to Title 18 U.S. Code Section 2253 subsection  
 8 (a), any person who is convicted of sexual exploitation of  
 9 a child is required to forfeit to the United States, (A)  
 10 any visual depiction described in section 2251, 2251(a),  
 11 2252, 2252(a), 2252(b), or 2260 of Title 18 U.S. Code in  
 12 any book, magazine, periodical, film, video tape or other  
 13 matter which contains any such visual depiction which was  
 14 produced transported, mailed, shipped and received in  
 15 violation of the offense of conviction.

16 B. Any property, real and personal,  
 17 constituting or traceable to gross profits or other  
 18 proceeds obtained from such offense, and;

19 Three -- excuse me, C. Any property real and  
 20 personal used or intended to be used to commit or to  
 21 promote the commission of such offense or property  
 22 traceable to such property.

23 The purpose of the forfeiture law is to prevent  
 24 any person from persuading, inducing, enticing or coercing  
 25 any minor to engage in any sexually explicit conduct and

**Jury Charge****1236**

1 to prevent any person from assisting any other person to  
 2 engage in any type of sexually explicit behavior for  
 3 purposes of producing, transporting or distributing any  
 4 such images or visual depictions of such behavior.  
 5 I'm now going to give you a definition of  
 6 "property subject to forfeiture."  
 7 Property may be subject to forfeiture whether or  
 8 not the property has been seized by the United States. In  
 9 this case the Government seeks forfeiture of specific  
 10 property that is subject to forfeiture as property that  
 11 contains visual depictions of the sexual exploitations of  
 12 children and as property used or intended to be used to  
 13 commit or promote the commission of sexual exploitations  
 14 of children.  
 15 May I see the lawyers for a moment at sidebar.  
 16 (Whereupon, at this time the following took  
 17 place at the sidebar.)  
 18 (Continued.)  
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 20  
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 25

**Jury Charge****1238**

1 (Counsel confer.)  
 2 MR. BODE: Why don't we just strike it, Judge.  
 3 That's fine.  
 4 (End of sidebar conference.)  
 5 (Continued.)  
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**Jury Charge****1237**

1 THE COURT: I have just noticed in here it says  
 2 furnishing. The Government stated in its summation you  
 3 are not seeking the couch and the stage. The jury may be  
 4 confused.  
 5 MR. KABRAWALA: Not specifically the couch or  
 6 the stage.  
 7 MR. BODE: There's an error on the part of the  
 8 Government.  
 9 THE COURT: So you are seeking the furnishings?  
 10 MR. BODE: We are.  
 11 THE COURT: Other than the couch and stage.  
 12 MR. BODE: It was just a slip of the tongue.  
 13 MR. KABRAWALA: Meant to say we are not  
 14 specifically seeking.  
 15 MR. BODE: I guess everything in there, actually  
 16 would be entitled not to.  
 17 They've been removed from the house at this  
 18 point. There are things still in the house but not the  
 19 things here.  
 20 MR. LATO: Your Honor, if the Government  
 21 misspoke in its summations, I think it should be pointed  
 22 out to the jury to avoid confusion.  
 23 THE COURT: You are not seeking the couch and  
 24 the stage then. The other furnishings?  
 25 MR. KABRAWALA: Just one moment, Judge.

**Jury Charge****1239**

1 THE COURT: The property includes A, 1b Premier  
 2 Desktop computer with the serial number mentioned before.  
 3 One 4 gigabyte SZ card, no serial number. And C, the real  
 4 property and premises located at 3 High Gate Drive,  
 5 Smithtown, New York, 11787, together with its respective  
 6 buildings, appurtenances, improvements, fixtures,  
 7 attachments and easement designated as district 473400  
 8 section 50, block 5, lot 23 on the Suffolk County tax map.  
 9 Earlier I said furnishings, but I wanted to confirm with  
 10 the Government and the Government conferred at sidebar.  
 11 They are not seeking furnishings within the home as part  
 12 of the forfeiture.  
 13 I will instruct you regarding the burden of  
 14 proof. It's the Government's burden to establish what  
 15 property contains visual depictions of the sexual  
 16 exploitation of children as previously defined in the  
 17 offenses for which the defendant stands convicted and what  
 18 property was used or intended to be used to commit or to  
 19 promote the commission of the defendant's offenses.  
 20 You should find that the Government has met its  
 21 burden if it has established the forfeitability of the  
 22 defendant's property by a preponderance of the evidence.  
 23 This is different from the standard that applied to the  
 24 guilt or innocence of the defendant.  
 25 At that stage of the case the Government was



**Jury Charge****1240**

1 required to meet its burden beyond a reasonable doubt at  
 2 the forfeiture stage, however, the Government need only  
 3 establish the nexus and forfeitability of the property by  
 4 a preponderance of the evidence and not beyond a  
 5 reasonable doubt.

6 What does a preponderance of the evidence mean?  
 7 To establish a fact by a preponderance of the  
 8 evidence means to prove that the fact was more likely true  
 9 than not true.

10 A preponderance of the evidence means the  
 11 greater weight of the evidence and it refers to the  
 12 quality and persuasiveness of the evidence, not to the  
 13 number of witnesses or documents.

14 In determining whether a claim has been proved  
 15 by a preponderance of the evidence, you may consider the  
 16 relevant testimony of all witnesses, regardless of who may  
 17 have called them and all the relevant exhibits received in  
 18 evidence regardless of who may have produced them.

19 If you find that the weight of the evidence on  
 20 an issue tips however slightly in favor of the Government,  
 21 then you must decide that issue in favor of the  
 22 Government. On the other hand, if you find that the  
 23 weight of the evidence on an issue tips in favor of the  
 24 defendant or that the weight of evidence is evenly divided  
 25 between the parties, then you must decide that issue in

**Jury Charge****1241**

1 favor of the defendant.

2 In other words, if the Government proves to you  
 3 that it is more likely than not that it's view of the  
 4 evidence on any particular issue is proved, then you  
 5 resolve that issue in favor of the Government. If the  
 6 Government does not make the proof tip in its favor, you  
 7 must decide that issue in favor of the defendant.

8 The requirements to prove beyond a reasonable  
 9 doubt which I instructed you about in connection with the  
 10 guilt phase of the case does not apply during the  
 11 forfeiture phase of the case and you should put those  
 12 instructions out of your mind.

13 I'll give you an instruction regarding  
 14 facilitating property.

15 Facilitating property which is subject to  
 16 forfeiture is any property used or intended to be used to  
 17 facilitate the commission of the offense to intentionally  
 18 employ, use, persuade, induce, entice and coerce a minor,  
 19 including but not limited to sexual exploitation of a  
 20 child and the possession of child pornography of which you  
 21 have convicted the defendant.

22 Facilitating property is that property that  
 23 makes the crime easier to commit or harder to depict. If  
 24 the use of the property made the property harder to  
 25 detect, it is subject to forfeiture. The property need

**Jury Charge****1242**

1 not be undetectable for the commission of the illegal  
 2 activity nor does the property have been used by the  
 3 defendant exclusively for this behavior to be forfeited

4 Property that was used the vast majority of the  
 5 time for legitimate purposes may nevertheless be forfeited  
 6 if it is facilitating a criminal offense. The  
 7 facilitation of even a single felony offense is sufficient  
 8 to justify forfeiture.

9 The forfeiture statute provides all real  
 10 property used or intended to be used to commit or to  
 11 facilitate the commission of an offense, of which the  
 12 defendant has been convicted of, is forfeitable.

13 Thus, even when only a part of the property is  
 14 used illegally, the statute calls for the forfeiture of  
 15 the entire property.

16 In reaching your determination whether any part  
 17 of the property was used illegally, you should not  
 18 consider whether forfeiture of the entire property would  
 19 be excessive or otherwise disproportionate to the criminal  
 20 activity that the property was used to facilitate.

21 I further instruct you that in reaching your  
 22 decision on forfeiture you should not be concerned, you  
 23 should not be considered about what might happen to any  
 24 property that you find to be forfeitable.

25 In this connection, you should disregard any

**Jury Charge****1243**

1 claims of any other persons or businesses, whether family,  
 2 friends, business associates, banks or victims may have  
 3 for the property. Those interests will be addressed at a  
 4 later time.

5 Similarly, you are not to consider whether the  
 6 forfeiture may excessive or otherwise disproportionate to  
 7 the crimes for which you convicted the defendant.

8 In that regard you should not give  
 9 consideration -- you should not give consideration to any  
 10 property of the defendant that has already been seized.

11 This matter is one entrusted solely to the Court and if  
 12 appropriate will be addressed at a later time.

13 Your verdict of the alleged property subject to  
 14 forfeiture must be unanimous. That is, everyone must  
 15 agree the evidence presented proves by a preponderance of  
 16 the evidence that the property in question contains visual  
 17 depictions of sexual exploitation of children as  
 18 previously defined in the offenses for which the defendant  
 19 stands convicted and/or was used or intended to be used to  
 20 commit or promote the commission of the defendant's  
 21 offenses or constitutes property traceable thereto.

22 This specific instructions I gave you earlier  
 23 concerning the counts of the indictment continue to apply.  
 24 You are further admonished with one exception regarding  
 25 the burden of proof about which I've already instructed

## Jury Charge

1244

1 you, all the instructions previously given to you  
 2 concerning your consideration of evidence, credibility of  
 3 witnesses and duty to deliberate together, all continue to  
 4 apply during your supplemental deliberations concerning  
 5 the forfeiture allegations in the indictment.

6 Also, while deliberating on these forfeiture  
 7 matters you may consider any evidence offered by the  
 8 parties during the guilt phase and the forfeiture phase of  
 9 the trial.

10 As I said before there was no additional  
 11 evidence during the forfeiture phase. You just heard  
 12 argument.

13 I'll hand the clerk for delivery, I'll hand to  
 14 Michelle for delivery, a copy of the special verdict form  
 15 and in a moment I'll ask that you retire again to the jury  
 16 room and deliberate with respect to that special verdict  
 17 form.

18 So mark the special verdict form as Court  
 19 Exhibit H. With the lawyers consent I'll cross out  
 20 "furnishings" on the verdict form.

21 MR. KABRAWALA: Yes, Judge.

22 MR. LATO: Yes, your Honor.

23 I've crossed that out, and I've marked that as  
 24 Court Exhibit 8. Hand that to Ms. Raymond and I'll ask  
 25 the jury to retire to the jury room to deliberate on

## Jury Charge

1246

1 who received and sent the child pornography was something  
 2 that was placed in issue in the opening statement. It was  
 3 reference to the fact that because of the Government's  
 4 investigation, who received it, who was requesting it and  
 5 who was obtaining it, based upon that issue being placed  
 6 in dispute in terms of the identity of the person who was  
 7 sending it and also on the critical issue with respect to  
 8 the sexual exploitation charge whether or not the videos  
 9 were preexisting prior to Mr. Valerio's request for the  
 10 videos to be made or whether or not they were made in  
 11 response to his request, the nature of the relationship  
 12 between Ms. Kalichenko and Mr. Valerio what was being  
 13 requested, the circumstances under which it was being  
 14 requested, all become critical, highly probative on the  
 15 issue of the identity of the person who was making the  
 16 request and receiving it as well as the images themselves  
 17 and the circumstances surrounding them and whether or not  
 18 she was making them new for Mr. Valerio or she had them in  
 19 the Ukraine previously.

20 So I view this as being highly probative on the  
 21 central issue in the case and with respect to certain  
 22 counts. If you look at the e-mails there really is no way  
 23 to even redact them because they are so interspersed  
 24 between the request for the child pornography, it would be  
 25 impossible to understand the context of the request

## Jury Charge

1245

1 forfeiture.

2 Thank you.

3 (Whereupon, the jury commence deliberations at  
 4 2:58 p.m..)

5 THE COURT: If everybody can be seated.

6 I want to place one case on the record with  
 7 respect to a rule I referred to before the verdict came  
 8 in. This is regarding the other information contained in  
 9 e-mails.

10 There was an objection by Mr. Lato to at least  
 11 one of the e-mails, but I specifically remember one about  
 12 language that was used in describing the relationship  
 13 between Ms. Kalichenko and Mr. Valerio and it is the  
 14 Court's ruling that the substance of the e-mails that  
 15 deals with their relationship with each other, their  
 16 interaction with each other, whether it be sexual  
 17 interactions or others with respect to visas, travel, the  
 18 whole substance of the nature of their relationship is  
 19 inextricably intertwined with the evidence regarding the  
 20 charged offenses and was necessary to complete the story  
 21 of the crime on trial and it is clear, including U.S. v.  
 22 Carboni, 204 F.3d 39, page 44, Second Circuit 2000, that  
 23 when it is offered for such purposes, it is not 404(b)  
 24 evidence, it is part of the charged criminal activity and  
 25 just as it relates to the facts of this case, the issue of

## Jury Charge

1247

1 because of the nature of the e-mails and how it goes back  
 2 and forth between their relationship with each other and  
 3 their request for the child pornography.

4 So I don't think it is a close question. In my  
 5 discretion, I obviously considered 403 and given the  
 6 highly probative nature of the other information and the  
 7 e-mails to understand the central issues in the case, that  
 8 the probative value is not substantially outweighed by the  
 9 danger of unfair prejudice to Mr. Valerio, given the  
 10 nature of the charge in this case involving sexual  
 11 exploitation.

12 There are two different children, including a  
 13 toddler, the racy nature of the e-mail exchanges and the  
 14 sexual content. The back and forth of their relationship  
 15 was certainly not of a different nature or of a worse  
 16 nature than the charges that are at issue in this case in  
 17 terms of the conduct so I don't think that there is any  
 18 danger of unfair prejudice or any confusion by the jury  
 19 that he's on trial because of his relationship with  
 20 Ms. Kalichenko.

21 It was very clear that this case was about the  
 22 children and not their relationship with each other. So  
 23 for those reasons I allowed those e-mails in over the  
 24 defense objection.

25 For the same reasons I allowed the stage and the



**Jury Charge****1248**

1 camera in.

2 In my pretrial ruling, that evidence was  
3 inextricably intertwined who had control over the SD card  
4 and camera that contained the images of [REDACTED] and in fact  
5 the central defense argument in the case that it was  
6 Ms. Kalichenko that made those images and certainly the  
7 other aspects of the basement area demonstrate the nature  
8 of that area and who has control over that area rather  
9 than a one-time use of the camera was certainly highly  
10 probative on that issue and not substantially outweighed  
11 by prejudice under 403.

12 They are inextricably intertwined with the child  
13 pornography in the basement and the question of the  
14 identity of the person who did that.

15 So that is the reason for that ruling.

16 So we'll wait for the jury's verdict on the  
17 forfeiture.

18 Thank you.

19 (Recess taken.)

**1249**

1 THE COURT: We have had a note marked Court  
2 Exhibit 4. This should be marked as Court Exhibit G, the  
3 forfeiture instructions. The word "furnishings" has been  
4 crossed out. Both sides agree this should go back?

5 MR. KABRAWALA: Yes, your Honor.

6 MR. LATO: Yes, your Honor.

7 (Whereupon, a recess was taken.)

8 (Jury note.)

9 THE COURT: We've received a note marked Court  
10 Exhibit 5. We've come to a verdict on forfeiture.

11 So bring in the jury for that verdict.

12 (Jury enters at 3:35 p.m.)

13 THE COURT: Be seated. We've come to a verdict  
14 on forfeiture.

15 Has the foreperson come to a unanimous verdict  
16 on forfeiture?

17 THE FOREPERSON: Yes.

18 THE COURT: May I see the verdict form so I can  
19 inspect it?

20 Madam Foreperson, as to the premier desk top  
21 serial number P80003011134, do you find this property  
22 subject to forfeiture?

23 Is the jury's unanimous verdict yes or no?

24 THE FOREPERSON: Yes.

25 THE COURT: As to the 4 gigabyte SD card, no

**1250**

1 serial number, do you find this property subject to  
2 forfeiture?

3 Is the jury's unanimous on this yes or no?

4 THE FOREPERSON: Yes.

5 THE COURT: As to the premises located at 3 High  
6 Gate Drive, Smithtown, New York, 11787, together with its  
7 respective buildings, appurtenances, improvements,  
8 fixtures, attachments, easements designated as district  
9 473400, designated as District 473400, Section 50, Block 5  
10 and Lot 23 on the Suffolk County tax map and all proceeds  
11 traceable thereto.

12 Do you find this property is subject to  
13 forfeiture?

14 Is the jury's unanimous verdict yes or no?

15 THE FOREPERSON: Yes.

16 THE COURT: Please listen to the verdict as  
17 recorded by the Court as to Premier desktop computer,  
18 serial number P800003011134, do you find this property  
19 subject to forfeiture?

20 The jury's unanimous verdict is yes.

21 As to the four gigabyte SD card, no serial  
22 number.

23 Do you find this property subject to forfeiture?

24 The jury's unanimous verdict, yes.

25 As to the premises located at 3 High Gate Drive,

**1251**

1 Smithtown, New York, 11787, together with its respective  
2 buildings, appurtenances, improvements, fixtures,  
3 attachments, easements designated as district 473400,  
4 designated as District 473400, Section 50, Block 5 and Lot  
5 23 on the Suffolk County tax map and all proceeds  
6 traceable thereto.

7 The jury's unanimous verdict is yes.

8 Members of the jury is, is that your unanimous  
9 verdict as to forfeiture. So say you all?

10 THE JURY: Yes.

11 THE COURT: Again I'll poll the jury.

12 Juror 1, is that your verdict?

13 JUROR 1: Yes.

14 THE COURT: Juror 2, is that your verdict?

15 JUROR 2: Yes.

16 THE COURT: Juror 3, is that your verdict?

17 JUROR 3: Yes.

18 THE COURT: Juror 4, is that your verdict?

19 JUROR 4: Yes.

20 THE COURT: Juror 5, is that your verdict?

21 JUROR 5: Yes.

22 THE COURT: Juror 6, is that your verdict?

23 JUROR 6: Yes.

24 THE COURT: Juror 7, is that your verdict?

25 JUROR 7: Yes.

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1 THE COURT: Juror 8, is that your verdict?  
 2 JUROR 8: Yes.  
 3 THE COURT: Juror 9, is that your verdict?  
 4 JUROR 9: Yes.  
 5 THE COURT: Juror 10, is that your verdict?  
 6 JUROR 10: Yes.  
 7 THE COURT: Juror 11, is that your verdict?  
 8 JUROR 11: Yes.  
 9 THE COURT: Juror 12, is that your verdict?  
 10 JUROR 12: Yes.  
 11 THE COURT: The jury has been polled and the  
 12 jury's verdict is unanimous.  
 13 I'll speak to the lawyers at sidebar.  
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1253

1 (Side bar.)  
 2 THE COURT: I'm giving the lawyers a chance to  
 3 inspect the verdict sheet. Is there anything for before I  
 4 dismiss the jury?  
 5 MR. KABRAWALA: No, your Honor.  
 6 MR. LAPINTA: No, your Honor.  
 7 (End of sidebar conference.)  
 8 (Continued.)  
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1254

1 THE COURT: Members of the jury, your jury  
 2 service is complete. I would like to give you my deepest  
 3 thanks for your jury service in this case. Although I did  
 4 not as you know conduct the jury selection in this case, I  
 5 do a lot of jury selections and often I ask people if  
 6 there is a reason they can't serve, a long line forms,  
 7 sometimes out the door of people who don't want to serve.  
 8 People have compelling reasons not to serve:  
 9 Illness, jobs, child care issues but there are a lot of  
 10 people that get up and it's clear to me that they don't  
 11 want to be bothered and don't want to serve.  
 12 When each of you are called in to serve on a  
 13 jury and you are given an opportunity to stand on that  
 14 line and try to get out of jury service, each of you were  
 15 willing to step up to the plate and perform your  
 16 obligations as a citizen of the United States to serve as  
 17 a juror. You should be proud of the fact you are willing  
 18 to do that.  
 19 As both lawyers noted in their summations, this  
 20 was a particularly difficult case to be a juror in because  
 21 of the nature of the charges, the images in evidence that  
 22 you had to view and consider.  
 23 I wanted to note that it's also clear to me that  
 24 you were conscientious in your deliberations in how you  
 25 conducted yourself as jurors and you should be proud of

1255

1 that fact. Our system won't work unless people like you  
 2 come in and perform this very important civic duty.  
 3 I've given this instruction so many times about  
 4 not discussing the case with anyone, but that doesn't  
 5 apply now. You can discuss the case with anyone you wish  
 6 or no one at all. It's up to you. It's a personal  
 7 decision, but you can discuss the case with everyone you  
 8 wish.  
 9 It is important to me that everyone interacts  
 10 with the Court, especially this courtroom, whether it be  
 11 the lawyers, the litigants. The jurors are treated with  
 12 professionalism and respect as they leave the courthouse  
 13 with a positive view of the interaction with the Court  
 14 system. So if there is anything that we could be doing  
 15 better to make your jury service or other service in the  
 16 future, just pass it along to Michelle and she'll talk  
 17 about it to me. I'm talking about anything about your  
 18 jury service.  
 19 I don't know if you know this, but federal  
 20 judges are appointed by the government for life, so if I'm  
 21 doing something wrong I'd rather know it now rather than a  
 22 long time for now.  
 23 So just pass those along to Michelle so I can  
 24 make that better.  
 25 (Whereupon, at this time the jury was

1 dismissed.)

2 THE COURT: My deputy told me you selected a  
3 date for sentencing, May 15th.

4 MR. KABRAWALA: Yes, sir.

5 THE COURT: At 1:30 p.m.

6 I don't know if the defense know whether they  
7 anticipate making any posttrial motions or you don't know  
8 yet?

9 MR. LATO: Probably your Honor we'll make a Rule  
10 29(c). I understand the basis of your Honor's ruling but  
11 I'll confer with the Government on a schedule. Certainly  
12 within two weeks from today I'll let you know whether I'll  
13 require more time to make those motions.

14 THE COURT: Just make sure you make the request  
15 for more time within the time frame of the rule which is  
16 14 days, as you know.

17 Thank you.

18 MR. KABRAWALA: Thank you, your Honor.

19 (Proceedings concluded.)

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